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Whither Bound?

Objective of New Dealers' Power Policy and Attitude toward Private Investment

BY WILLIAM P. HELM

BY way of starting the conversation, I asked the gentleman what would become of the coal operators and their many miners. Those down in the deep South facing ruin from the widening sale of cheap electric power at the mammoth Muscle Shoals development. Those, too, farther north in Tennessee, Kentucky, and Virginia, now face to face with a visible menace as Norris dam adds cubits to its growth.

"The coal men?" he repeated. "What's the matter with the coal people now?"

Nothing, I assured him, other than the little detail of extinction at the hands of the Federal Treasury. And seeing a frown cross his handsome face, I made haste to assure my New Deal vis-a-vis that I, as a working writer, held nobody's brief, in or out of the coal business, but simply was quoting the coal men.

"They say," I told him, "that TVA is going to put them out of business; that their miners, by the tens of thousands, will be idle; that their plants, by the hundreds of millions of dollars, will be liquidated by decay and disuse; that the railroads of their section will lose tens of millions of freight revenue they now enjoy from the hauling of coal; and that instead of helping employment and industry, the government is crushing it. How about it?"

HE did not reply at once, but reached for a cigarette and

looked out the window, six stories up, across the roof tops to the Monument. For a moment, I feared that the interview with this prominent New Dealer, high in the councils of those determining and administering the government's power policy, would terminate before it was launched. It is no easy task, even for newspaper folk, to penetrate the inner citadels of the New Deal, save *en masse* at regular press conferences; and this interview, trembling in the balance, had been timed a week ahead. The condition attached was that my victim was not to be mentioned by name.

But the frown passed and my question presently found answer.

"I am going to answer you this way," he said, "and you may draw whatever inference you wish: the automobile put a lot of livery stables out of business."

"And the coal people?"

"I'm afraid they are going to follow the livery stables. They must do so, in large measure, under a law the New Deal Congress had nothing to do with; the inevitable economic law. Progress is ruthless to those in its path. TVA is progress."

Such, I found in other interviews with other New Dealers, is the keynote of the new Federal power policy, in so far as that policy has been developed.

THE bald fact remains, however, that the government's power policy has not yet been fully determined. Amazing as this may seem, no one in authority denies it. They have gone ahead with Grand Coulee and Bonneville and Caspar-Alcova dams; they are looking ahead to Loup creek projects, Missouri River Authorities, and other gigantic enterprises. But they have not yet, these enthusiastic and crusading cohorts of the New Deal, decided what they are going to do with them when they've got them.

Not a mother's son of the energetic lot is willing to stand up on his two feet and say: "Now, here's what we are going to do with all this power." And, as the lamented Doc Munyon used to tell the readers of his ads, "there's a reason." They don't know.

If they did know, or if the President himself knew, there would be scant wisdom in the work now being done by the National Power Policy Committee. That group, it may be recalled, was established by the President last July. Secretary Ickes, who has aided many municipal power projects to life is the head, or chairman. Every major Federal agency that has a finger in the power pie is represented by a delegate.

IT is an impressive committee, as governmental power stacks up, loaded, if one may use the term without intending offense, with the heads of vast and far-flung Federal agencies. The Bureau of Reclamation, chief begetter of hydroelectric power, is there. The Federal Power Commission is there. TVA is there. Our long-standing friendly enemy, Corps of Engineers, War Department, is there. SEC, new boss of the stock exchanges, is there. The Mississippi Valley Committee, PWA, is there. Others, too.

"It is not to be merely a fact-finding body," wrote President Roosevelt in tendering the chairmanship to Mr. Ickes, *"but rather one for the devel-*

opment and unification of the national power policy."

The language is Mr. Roosevelt's; the italics belong to me.

A broad charter has been given the committee by the President. It still labors at its task of developing and unifying the government's power policy; and the fact that it does so is fair warranty for the conclusion that the policy is not yet developed in its entirety. The report of this committee, now in the making, probably will be published sometime early in 1935.

It also is perfectly logical to expect, as the New Dealers have thought it all out, that somebody is going to be hurt by the policy when it is developed. That is Progress. If the hurt should extend to the point of extinguishing private public utilities in large areas and severely crippling them elsewhere, that, too, would be Progress.

If the new policy should result in the migration of whole industries from their present established sites to faraway pastures greening with low power rates, that, also, is part of the price of Progress. And if the communities thus deserted and bereft of all that has sent their life-blood coursing on its way, fall as ripe plums into the sheriff's horny hand, their fall cannot be attributed to any law of the jungle. They will fall in the name of Progress.

Just how such Progress is to be attained, I gathered at several fonts, comes under two distinct headings. The first concerns PWA financing of municipal power projects. That, while working perhaps toward the back door of Progress, is in a class by itself. The second heading covers such ambitious undertakings as the Columbia river projects for whose ultimate power development there now appears to be no full market.

There are hundreds—or maybe it was thousands—of communities scattered over the United States today, I was told, receiving electric power from utilities that are operating without an exclusive franchise to do business in those communities. In many cases, franchises have expired by limitation and for some reason or another have not been renewed. And a great many of the private companies are charging prices "much too high," I was informed, for the power they sell.

Those are the communities PWA is willing to aid with funds from the Federal Treasury in the construction of municipal power plants. Those alone; where a private utility is properly chartered and its charter has some

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time to run, the community it serves could bark forever at Mr. Ickes' closed door and get no financial bones.

But when one of these overcharged communities served under a dead-if-not-buried private utility charter gets the idea that it would like to have its own municipal plant, the Ickes' door opens and the idea invites inspection. Such, I was told, was the procedure. The inspection follows. Engineers are detailed to go over the idea. They delve into costs, maintenance, and market. If they reach the conclusion that a municipal plant can furnish power to the applying community more cheaply than the privately owned utility now supplying it, the Treasury's hinges creak, for the money within wants out.

It matters not that the municipal plant will contribute nothing in tax receipts to the community whereas the privately owned utility does contribute thus and handsomely; the price per kilowatt hour is the deciding point. There are certain PWA requirements to be met as to amortization and so on. And the community must bond itself to pay the Federal government back. There is little else.

Then, usually, begins the business of going back to the privately owned utility. With the club of prospective municipal power in its hand, the government suggests that the privately owned company might want to hold on to the business by reducing its rates. Whether the private concern can do this and operate at a profit is of no concern, apparently, to Uncle Sam. Faced by this desperate alternative, many a privately owned utility has given up hope of immediate profit to save its investment and lowered the rates.

Others defiantly have told the municipal plant advocates where to go. But they didn't go there—not directly, anyhow. They went to work, instead; to work on the new municipal plant, financed by the taxpayers of the United States. And that accounts for the bespangling of America in recent months with PWA power plants.

That is one end of the government's power policy, the smaller end. The New Dealers make no bones about their impelling interest. They are out for lower rates and they intend to get them wherever possible.

The second, and larger, end of the now-forming power policy is actuated, probably 100 per cent, by the same general idea. Apparently everyone in authority, at least so far as electric power is concerned, from the President down, sincerely believes that the privately owned electric utilities in the main are gouging their customers. They are out for lower rates.

Hence Bonneville. Hence Grand Coulee. Hence TVA. Hence all the other ambitious hydroelectric projects, although this part of the plan is not openly admitted as the prime impelling motive for such undertakings. The ultimate business of Grand Coulee and Bonneville, I gathered, is reclamation. The development of power is simply a by-product; the main business is to coax profitable sprouts from now barren fields.

And the real business of the mammoth St. Lawrence project, likewise, I was told, was to give the Middle Western Empire an outlet to the

Effect of Threat of Government Competition

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sea. One New Dealer, in so stating, added that "a lot of communities along the St. Lawrence want cheaper power, too." Incidentally, the administration loves the St. Lawrence program and is going to get it okayed sometime; it hopes, at this session of Congress.

"What," I asked a prominent New Dealer, "are you going to do with all the power that will be developed on the Columbia river?"

"Sell it, if we can," he replied.

"To whom?"

"To the farmers out there mainly. That country is now using, in its rural sections, only 15 per cent or so of the power it ought to use."

"What about the privately owned companies now supplying such demand as there is?"

"They are charging too much. And they can't profitably build the transmission lines to serve the sparsely settled country. The government can build those lines and intends to do so."

"What will happen to the private investment when that happens?"

"Oh, I suppose it will suffer; there doesn't seem to be much doubt about that."

IT appeared that the government is much concerned at present as to how far it can transmit the Columbia river power without huge percentage losses. Different opinions prevail as to this. Some think a radius of 150 to 200 miles is about right. Others believe that present facilities will allow transmission without large losses up to 300 or even 500 miles. One official said that a project was in contemplation—not a Federal project, he hastened to add—whereby a transmission line would carry power virtually the entire length of the Pacific coast, from Seattle and Tacoma to Los Angeles.

This, he thought, could be made practical by the establishment of a number of properly spaced substations along the line with facilities for "stepping up" the power from time to time. He said he wasn't an engineer, however, and knew little of such things.

But this matter of radius of trans-

mission seems to be destined to play a major rôle on the newly set Federal stage. It apparently is going to cut much ice on that particular pond. Upon the determination of the question as to just how far the government can transmit Columbia river power without big leakage of current will depend, apparently, much of the program yet to be outlined by the various planning groups.

"But what about the people that are left in the cities and sections from which those industries move away in order to get cheaper power in the Northwest?" I asked.

"I'm afraid," he said, "there will be considerable grief in some of those cases, but it will be compensated by offsetting advantages in the Northwest."

THE vision of possible wholesale industrial migration to the prospective Northwestern Empire spawned an entire herd of resultant questions. There was the interesting possibility, for instance, that cheap power there would induce entirely new industrial enterprises to start large-scale operations—enterprises that would compete with industries now long established. Might not that be a logical result of the program?

It might, indeed, I was told, but in the true definition of the term that, too, might be called Progress. The government could not attempt to foresee and act upon that possibility; its concern was to make cheap power as abundantly available as possible for public use. If Industry devised new processes to compete with the old, and if cheap power invited such competition, that would be up to Industry, not to government.[1] Yes, it might put more men out of work, but—

"Look at the Washington Monument," my friend said. I followed his gaze and my eyes rested not on the lofty needle but upon a fringe of steel scaffolding which almost entirely obscured the Monument itself.

"They are repairing and cleaning the Monument now," the official went on. "And it may surprise you to learn that we have had protests against using elevators to convey the necessary supplies to the top. Some labor folk think we should not use them; that the elevators put men out of work; that hodcarriers should be employed instead to make more jobs. But the elevators are being used nevertheless. They are an industrial improvement over the hodcarrier. The new processes and new industries you mention may be as great an advance over those now in operation as the elevator has been over the hodcarriers."

EVEN so; it still seemed likely that the competition of new industries and enterprises with the old at a time when the government, through the National Recovery Administration and other agencies, is trying to eliminate overproduction in lines already established, would result in work at cross

[1] The Tennessee Valley Authority has already announced that successful experiments have been completed whereby ceramic production, making use of electric processes instead of the natural gas fuels now used, can and will be established as a new industry in the Tennessee valley region. This development comes notwithstanding the fact that the established ceramic industry using natural gas processes is functioning at much less than capacity by reason of reduced demand for ceramic products, and there is, under prevailing market conditions, no discernible need for increased ceramic productive capacity anywhere in the United States.

purposes. The thought was dismissed, however, with the suggestion that NRA's days were fleeting and numbered and that the power program was being developed for years to come, perhaps generations. The immediate NRA program was to meet a present emergency which undoubtedly would have passed long before the dream of cheap power should become a reality. Such was the New Deal thought.

But what about a multiplicity of Federal power projects, each bidding for Industry? Would not Grand Coulee, for instance, compete with the St. Lawrence development when the latter begins to generate more power than the up-state New York and other farmers require? Would not Bonneville compete with TVA? Caspar-Alcova with Boulder dam? Instead of a great allure to the Far Northwest would there not be many great allures to many sections? Would not Industry be canvassed by many power salesmen, all working for Uncle Sam?[2]

THAT, my informant agreed, well might come to pass, except for one important factor: the government has no thought and will have no thought of employing high-pressure (or even low-pressure) salesmen to sell its power to Industry. The power will be made available, ultimately in many sections. Industry must make its own decision as to which of the various Federal plants it would patronize.

The factors of freight charges on raw materials and on finished products to the respective markets; the factors of raw material supply at hand or distant; the factor of present investment in plant; the factor of competition—these were among those named as playing feature, if not stellar, rôles in the coming drama.[3] Further, St. Lawrence, I was reminded, must leap many a hurdle yet before it emerges from its blueprints. There doubtless would be a shifting of industries to the fields of cheaper power, not one shifting but numerous shiftings to numerous Federal plants. Each of the Federal projects was likened to a magnet the field of which was limited by distance.

[2] Differences between publicly owned plants on marketing areas have already become discernible. Political leaders in Spokane, Washington, just previous to the election on November 6, 1934, were attacking the water-power ambitions of the Seattle municipal system as being designed to sabotage the marketing prospects of the Federal government at Grand Coulee. Much of the opposition to the so-called Bone bill (authorizing municipal plant-area extension) approved at the recent election, was based on the differences between government ownership advocates in East and West Washington.

[3] As a matter of fact, except for special industries making heavy use of power as part of their manufacturing process (such as the electro-metallurgical industries), some industrial experts question whether the cheap power factor alone would be sufficient to induce industrial migration as compared with other factors, such as industrial markets, transportation, labor, etc. Evidence of the relative importance of power costs in various industries is shown in the following survey published in 1929 (during a peak period of industrial production) on the occasion of the annual convention of the association of Edison Illuminating companies at Quebec, P.Q.:

(*Note continued on following page.*)

¶ "THE *New Dealers make no bones about their impelling interest. They are out for lower rates and they intend to get them wherever possible.*"

THESE are great forces which are to be unleashed and even a blind man could see their far-flung consequences. As yet there has been developed no hard and fast, iron-clad policy to govern this phase of the government's gigantic competition with private industry in the realm of electrical energy. Nor is there likely to be, I was told; the policy doubtless will be elastic when it is adopted; sufficient to harmonize the elements of competition possible in the construction of many Federal plants in many sections. How—ah, there's the rub.

We came back to Grand Coulee, for somehow it did not seem clear to me how the New Dealers could expect, in reason, to promote an industrial empire in that sparsely settled land. Not so long as in another breath it would offer Industry cheap power nearer to its present base.

"What about Grand Coulee and the Far Northwest?" I asked. "Aren't you afraid you're putting on too big a show out there? Isn't it just possible that you will overdevelop the Columbia river?"

He laughed and turned to the papers on his desk.

"Listen, pest," he said—although not exactly that way—"those people out there are power-hungry. They urged us to build not two but ten Bonneville dams."

"Ten?"

"Yes, sir; ten. One, two, three, four, five, six, seven, eight, nine, ten—ten Bonneville dams, up and down the river."

"We looked the ground over, however, and decided that for the present we would build only two. Two, at the outside limit."

"Meaning—?" I suggested.

"Bonneville and Grand Coulee. Good day."

NOTE—*continued from preceding page.*

	PER CENT OF VALUE OF PRODUCTS			
Industries	*Materials, profits, etc.*	*Wages*	*Taxes*	*Power*
Clothing—Shoes	79.43	18.40	1.81	0.36
Sheet Metal	74.79	20.90	3.69	0.62
Chemicals	83.35	14.70	1.27	0.68
Lumber and Sash	69.04	27.10	3.11	0.75
Printing, Publishing	76.00	20.20	3.00	0.80
Dairy—Canning	88.95	7.40	2.72	0.93
Leather	82.32	14.50	2.12	1.06
Paper Products	74.05	22.00	2.83	1.12
Automobiles	81.35	15.12	2.28	1.25
Bottling	76.37	15.30	7.00	1.33
Furniture	70.98	25.90	1.78	1.34
Machine Tools	71.07	25.05	2.52	1.36
Paints	88.70	7.55	2.35	1.40
Textiles	76.67	20.00	1.74	1.59
Bakeries	79.26	16.53	2.37	1.84
Enameling	78.96	14.75	3.96	2.33
Electrical Machinery	73.73	21.00	2.88	2.39
Total	77.92	18.05	2.79	1.24

On November 1, 1934, at Portland, Ore., Colonel Thomas L. Robins, Army engineer for the Northwest Pacific division, reminded subcommittees of the Pacific Northwest Regional Planning Commisson that while cheap electric power from Grand Coulee and Bonneville dams may be the nucleus for building a greater Pacific Northwest, there must be other inducements in the form of cheap land, cheap transportation, and low taxes before new industries and settlers can be expected to migrate to that area.

Primary Defects in Public Utility Regulation

THE author would not abolish state commissions as would many of their critics but believes there is need for a better personnel, more liberal appropriations, and more flexible rate making. He blames state executives with powers of appointment and legislatures with control over commission appropriations for what he considers to be many of the shortcomings of the present system, including proper initiative on the part of the commissions in the public interest.

By HOWELL WRIGHT
VICE CHAIRMAN, SPECIAL COMMITTEE ON PUBLIC UTILITIES, OHIO STATE BAR ASSOCIATION

THERE are serious flaws or imperfections in our present state commission system of public utility regulation. Experience of twenty-five years has so demonstrated.

Some of the critics, including those who believe that in all human experience it is possible to rush suddenly into the light, declare that regulation is a complete failure. We do not accept this conclusion.

On the other hand we find some utility corporations and their spokesmen almost entirely satisfied with the system as it now functions in the different states. They do not want any change. They seem to be satisfied to have poorly equipped, undermanned commissions, operating under laws which do not fully protect the public interest and with incompetent help and insufficient funds. They sometimes do not object to delay in rate controversies. They forget, however, that ratepayers must ultimately pay the costs of such delays and that in the public mind commission regulation means rate control. These companies may be found working against change and progress; against complete revision of state regulatory laws. They may be in the majority but they do not represent the more progressive group among the utilities.

THOSE who would abolish state regulation or offer quick cure-all remedies for its faults, as well as those who are contentedly satisfied with the *status quo,* remind us of the story of the ancient astronomer who used to go out at night to observe the stars. One evening as he wandered about with his whole attention fixed on the sky, he fell into a deep well. While he lamented and bewailed his sores

and bruises and cried out loudly for help, a neighbor ran to the well and learning what happened said: "Hark ye, old fellow, why, in striving to pry into what is in heaven, do you not manage to see what is on earth?" It has been our own experience in the business of government that most "stargazers are poor pathfinders."

President Roosevelt declared recently that "the public service commissions of many states have often failed to live up to the high purposes for which they were created." Without doubt this is true. It is not merely a matter of opinion. In the main it is a matter of record. Why is this? For what reasons have the state commissions as a whole failed to gain for themselves that position of leadership which was planned for them and which the general public expected of them?

The answer may be found in the records of study and investigation of the past five years or more. The fundamental defects of commission regulation have been revealed therein but unfortunately not made clear to the public at large. They have been confused in too much partisan propaganda. Not only the general public, but our legislative bodies as well, seem to have failed generally to comprehend the most important causes of the clearly apparent faults in the system. What are the facts?

SOME of the fundamental defects may be easily discussed under three headings as follows:

1. Organization and personnel;
2. Appropriations or financial support; and
3. Rate making.

The conditions described here do not refer to any one state but apply equally to a large number of states. Some of the conditions and defects discussed herein appear in the July, 1934, report of the Special Committee on Public Utilities of the Ohio State Bar Association of which the writer is a member.

We believe the commission system of regulation, provided it is permitted to function as a legislative-administrative body, offers the greatest possibilities for achieving the aims and objectives of effective public utility regulation. It is the best method of regulation devised thus far. Unfortunately, only a few of the state commissions have so functioned.

INSTEAD of acting as leaders, as legislative-administrative bodies, exercising continuous supervision over public utilities, prescribing just and reasonable rates and enforcing reasonable standards of service, the commissions have assumed too much of the judicial or *quasi* judicial rôle. They have draped the judicial mantle around their shoulders and too often have been content in waiting for issues to be brought to them to decide. They have failed to take the initiative expected of them; to adjust themselves to rapidly changing social and economic conditions, to act boldly in the public interest in emergencies, particularly in the matter of making rates which to the public mind is the very essence of utility regulation.

As a rule commissions have not functioned as fact-finding, planning, and administrative bodies. They have thus lost prestige. And the public has lost confidence in the commis-

sion system to an alarming degree.

LEADERSHIP in commission regulation means exactly the same thing as anywhere else—direction, action, performance, execution. Such a body acting under authority delegated by the legislature does not go of its own motion; it is moved by men and if efficient results are to be obtained they must have ability, personality, and character. In addition, commission membership presumes a combination of engineering, accounting, legal, and business talent. These are the fundamental qualities required for leadership. As yet, however, they have not been fully recognized as the first requisite for commission membership by those who have the selective power.

Generally speaking, the state statutes under which commission appointments are made fail to prescribe positive qualifications of high standard. They are lamentably weak in this respect. This is an outstanding reason why so many commissions have not realized their potentialities in a manner expected of them by the public.

We assert without fear of serious contradiction that the average ability of commission membership is far below the requisite standard. While there have been a fair number of excellent appointments and some outstanding commissioners, too many of those appointed have been wanting both in experience and in native ability. In our opinion, the low average of ability of the commissioners has done much to discredit the commission form of regulation and to bring into question the effectiveness of rate regulation.

Commission appointments have been made too often as rewards for political service and too rarely have measured up to the standards of education, experience, and training which should be universally considered as essential qualifications for such appointments. Under the plan of choosing the commissioners by popular election, vote-getting ability is too often regarded as the first qualification.

EQUALLY serious is the fact that too many governors seem to have the idea that the state commission should serve them as a political agency because they appoint the members. They forget that such a body belongs to no political party but is created to serve the public interest in an important branch of our industrial economy. Membership on a state utility commission should not be a political job. It should be a profession.

We have had too much political state commission regulation and too

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many political rates in recent years. This will continue just so long as politically minded governors are permitted to appoint inexperienced, politically minded commissioners. Candidacy for elective public office is also unfortunate and often disastrous. A candidate for elective office while writing a decision or ruling as a member of a state commission in a great controversy involving the public interest will almost inevitably allow his political ambition to influence his conclusions. It requires only casual observation, and not cynicism, to say that a candidate will not ordinarily subordinate his personal interest to his public duty as a commissioner. Human nature is still human nature.

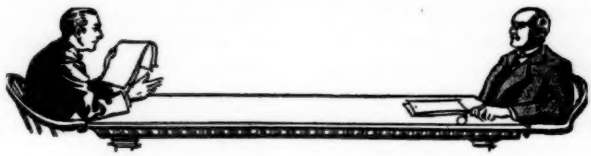
COMMISSION salaries are too small in most of the states and the term of office too short to attract men of the required highest caliber. Mediocre appointments thus become the rule.

We find that competent young men are sometimes appointed as commissioners, but just about the time they have absorbed an understanding of the problems at hand and could be most useful to the state, they are forced to resign for financial reasons or fail of reappointment on account of politics. Men of ability after such experiences are often sought and employed by the utility corporations. When a political commissioner fails of reappointment it is not difficult to fill his place with another party politician. To some degree, therefore, it is apparent that some of our public service commissions are functioning as training schools for future service with the utility corporations and for regular political service in the party organizations.

WE hear much these days about the slow motion performances of some of our state commissions. Take one state for illustration: The commission is required by law to regulate and supervise in the public interest, gas, electric light, water, telephone and telegraph companies, steam and electric railways, motor busses, pipe lines, terminals, water transportation, and express companies serving millions of customers with billions of invested capital and receiving millions in revenues for service rendered—to regulate these—as to capitalization and security issues, consolidations and mergers, accounting, valuations, reports, service, rates, and joint use of facilities. This is a herculean task under the most favorable conditions.

THE three commissioners of the state, however, are as a rule appointed by the governor as a reward for political service rendered to one party or the other for a short term at low salaries. The legislature of the state, some of the members of which are vociferous "especially at election time" about the "failure" of the commission "to protect the public," has failed to set up any standard whatsoever of experience, ability, or training for membership on the commission. The law carefully stipulates, however, that not more than two members shall belong to the same political party and permits the governor to designate the chairman.

Appropriations for the work of the commission are insufficient, with the result that it is undermanned as to legal, accounting, engineering, and oth-



Plenty of Work but Little Pay

"THE legislative bodies have not hesitated to impose new burdens upon the commissions and to give them new duties and responsibilities. At the very same time, however, they have been amazingly derelict in fulfilling their obligations to the public to make effective commission regulation possible through adequate and increased appropriations. Not only have they been niggardly as a rule; in some states they have actually starved the public service commissions into impotency."

er services; it does not have full authority to appoint its operating staff, most of which is underpaid and some of which is incompetent; and finally, it has little by way of engineering and other equipment.

Imagine a commission of three members—a hard-working engineer of limited experience with a zeal for protecting the public interest and for doing right by all parties to rate questions, attempting to function as chairman with a perpetual candidate for elective office on one side and a party politician on the other. What is the result? Even under the best regulatory laws in the world the answer would be the same—regulation which reflects the capacity and character of the commissioners. In other words, the state has failed to provide the personnel, funds, and equipment required by this agent, the commission, for the tasks delegated. At the same time almost every conceivable condition has been set up by the responsible authority of state government which makes for inefficiency, incompetency, and delay in commission regulation.

THE responsibility for commission regulatory failures under these conditions rests squarely upon the governor and the legislature, the representatives chosen by the voters to protect them against abuses on the part of the public service corporations. This picture can be duplicated in many states.

Under these conditions and considering the array of high-grade, experienced legal and engineering talent sometimes representing the utility companies, is it any wonder that the public sometimes thinks the commissions are "utility minded"? Most public service commissioners seek to serve the public interest. Some, however, are naturally "utility minded" or have utility mindedness thrust upon them by force of political and other circumstances, and some acquire it

because they work along the line of the least resistance and haven't the thinking ability to distinguish it from the public interest. It is unfortunately true as Montaigne said: "Human institutions must be handled roughly and without too great attention to detail and part of them left to luck." It is a miracle, therefore, that some of the state commissions have been able to accomplish so much for the public good.

The state appropriating authorities have consistently failed to provide the public service commissions with sufficient funds to enable them to function effectively in the public interest. For years they have been governed in this respect by a shortsighted policy of parsimony and false economy to the detriment of the utility ratepayers. The legislative bodies have not hesitated to impose new burdens upon the commissions and to give them new duties and responsibilities. At the very same time, however, they have been amazingly derelict in fulfilling their obligations to the public to make effective commission regulation possible through adequate and increased appropriations. Not only have they been niggardly as a rule; in some states they have actually starved the public service commissions into impotency.

Many of the failures of commission regulation may be ascribed directly to gross lack of financing. Few state commissions, if any, are sufficiently financed by the legislatures to enable them to regulate and control effectively the public service corporations and to serve as fact-finding, planning, and administrative bodies in the public interest and in accordance with the demands of present-day social and economic conditions. And yet it would seem to be an elementary proposition that no state can have A-plus commission regulation of public utilities or maintain even a B-plus regulatory organization, personnel, and equipment on C-minus appropriations of money.

The 20-year experience of just one state, which is typical of many, will illustrate the far-reaching effects of this consistent legislative policy of under-financing the public utilities commissions.

Although the scope of the activities of this particular commission has increased greatly during the last twenty years, the funds available for such work have not been increased in proportion. The work of the commission is still being financed on the basis of its 1920 activities.

Today there are six hundred utility companies, subject to regulation in this state. They serve more than 4,000,000 users with a capital investment of more than three billions of dollars. Most of them are no longer controlled within the state, but are dominated and directed by absentee officials under the highly developed holding company plan with its new and complicated problems for state regulation which few states, if any, have been able to cope with.

In spite of this, the maximum amount of money now allowed annually under the law for commission regulation, exclusive of motor transportation, is $200,000, the same amount authorized in 1920. It is obtained by special annual assessments

upon the public service corporations.

This amount is insignificant enough, but to make matters worse the appropriating officials of the state annually divert about $40,000 of the $200,000 to other purposes of government. In the years 1925 to 1932, inclusive, nearly $300,000 of the ratepayers' money paid in by the public service corporations for commission regulation was appropriated for other governmental uses. The utility companies have sat supinely by and allowed this to be done without protest, while the newspaper press not only has said little about it, but frequently has condemned the ineffectiveness of the commission, especially in its work of rate control and its activities in general. The commission has been powerless to act and has been without the quality of leadership which would take the issue to the public.

There have been but two or three outstanding commissioners in the state referred to in twenty years. The conditions of appointments—salary, term of office, and political qualifications—make it difficult to secure men of the highest caliber for such service.

THE entire working organization is inadequate and underpaid. For example, the auditor and statistician, one person, is paid $3,987 a year and has a staff of one stenographer and a clerk. It is a physical impossibility for this staff to keep up with the work required of it by law. Much of it of necessity is left undone, including the all important work of checking and auditing the annual reports of the utilities.

The accounting staff is practically *nil.* Much of the accounting is done by engineers, while the engineering staff, so-called, headed by an engineer who is willing to serve in that capacity for $3,750 a year, is composed of eighteen persons, some of whom are paid as little as $1,800 a year. With the present engineering personnel the commission never will catch up with back work or keep up with new work.

While creditable work has been done under these conditions, it must be clear that the people of this state, as well as of all the states, are getting just the sort of commission regulation their legislative representatives make possible through parsimonious and too often ridiculous appropriations. Imagine one of our largest and most populous states attempting to regulate the public service corporations in the public interest with an annual appropriation of $160,000!

Lack of financial support is one of the causes of the failure of so many

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of the state commissions to aid the municipalities and other political subdivisions of the state in regulatory matters generally but especially in the preparation and hearing of rate controversies.

The smaller cities as a rule are unable to provide the necessary expert legal, engineering, and accounting service often required in rate cases and in most states have the right to expect this service from the state commissions. They have the legal right to expect and demand such commission assistance even in home-rule states where continuous commission regulation and supervision of utilities is limited by rate-fixing powers granted to home-rule cities under the Constitution.

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The problem of rate regulation and control is uppermost in the public mind today. The public service commissions have been subject to more criticism in relation to their records incident to rates than in any other respect. The ability of the commissions to regulate and control rates is the public measure of the effectiveness of the whole system of commission regulation. To the general public, commission regulation means only one thing—control of rates.

THE public does not generally understand that the problem of rate regulation involves the valuation of utility property according to more or less detailed statutes. It has relatively little concept of "fair return upon fair value," the "reproduction cost new less depreciation" and "prudent investment" theories of rate making, "going value," and depreciation allowances. People in general have no clear picture of the original and appellate jurisdiction aspects of our present system; the powers of the commissions and of the courts as to judicial review; on the contrary the public concerns itself not with methods and procedure but with results.

The public is seriously concerned about rates charged for utility services and is weary of the long drawn out and expensive procedure by which rates are finally determined. In our opinion, the delay in reaching decisions has been more responsible for bringing the regulatory system into disrepute than has dissatisfaction with the decisions themselves. Delay has become the focus of attack; the "storm center" of the present hostility to the system.

MANY specialized problems have been ushered in with valuation proceedings for rate-fixing purposes as they have been developed by legislatures, commissions, and courts along with the enormous growth of utility companies and utility services in the past ten or fifteen years. Significant among them are the experts employed to establish value. These so-called experts play a prominent rôle in public utility valuation and in regulation generally. As in all fields of modern tech-

Rate Making a Problem of Business Economics

"RATE *control, the fundamental of commission regulation, is not just the negative duty of fixing rates which merely escape confiscation. It is the positive duty of making rates which are sound from the point of view of the public interest. The fixing of rates or prices is not a judicial question. Rate making is essentially a problem of business economics."*

nology, there are many aspects of public utility regulation that call for highly specialized knowledge as well as conclusions drawn from vast compilations of technical facts. Such knowledge is not valuable until it has been specifically compiled for each investigation.

ONE might assume that it would be possible to engage unprejudiced experts and proceed to gather the facts. However, a far different situation appears to obtain. Appraisers are employed both by the utility and by the state or municipality, as the case may be, to ascertain the value of the property. What do these appraisers do? Just as one would expect, the value of the property according to the appraisers employed by the state is always substantially lower than the value found by the appraisers employed by the utility company. These appraisers are not disinterested witnesses trying to find the actual value of the property, but they are inevitably special advocates. They cannot be unbiased seekers of the facts because they are employed and paid to get certain results for their employers.

Under our present system—a system which sometimes is made mandatory and to which a commission must often subscribe—the record is so encumbered with voluminous technical material that it is well-nigh impossible for a judge, and possibly for the legislator, a commission, or a court, to unravel. This generally results in more confusion and makes it possible for the real objective of regulation to become lost.

PERHAPS the most serious infirmity of opinion evidence is that the witness may be selected at will. It is well known to lawyers that a fact must be established by those who have knowledge of it, who were present and saw it, but that an "expert" can be brought from the ends of the earth and that a dozen may be rejected until the right one is found. Under certain conditions, therefore, almost any opinion may be had within certain limitations. This evil alone appears to be sufficient ground for providing greater flexibility in the matter of establishing a rate base in order that such a base may be placed on the solid ground of recorded facts of an accounting nature. For all value, in the absence of recorded facts, is merely a matter of opinion.

The public finds difficulty in understanding complex procedure and the highly technical facts, and this frequently results in unwarranted suspicion. It was attempted originally to turn regulation over to expert commissions, because the legislatures and courts were incompetent in this field. It appears now that the commissions have not been sufficiently administrative to accomplish the desired end.

As a result of such intricate procedure incident to rate making—procedure which is sometimes mandatory upon the commission by detailed statutory provisions—there is too much delay in establishing the cost of utility properties. The public is increasingly critical of both the delay and the expense involved in the determination of utility rates. As we have already pointed out, the public's conception of regulation is one of rate control, and so, because of the delays and expense of rate cases, the public does not believe that rate making by the commissions is under public control.

Rate control, the fundamental of commission regulation, is not just the negative duty of fixing rates which merely escape confiscation. It is the positive duty of making rates which are sound from the point of view of the public interest. The fixing of rates or prices is not a judicial question. Rate making is essentially a problem of business economics. Under the commission system, however, it has developed into a judicial process, a combination of *quasi* judicial commission and state and Federal court procedure, which is intolerable. When practiced by underfinanced, politico-minded commissions with underpaid, inexperienced, and otherwise limited legal, accounting, and engineering staffs, the results are indefinite and unscientific and produce rate findings and decisions which are bound to invite the judicial veto. The continued delinquencies of the state commissions in rate making are forcing both the public and the public service corporations into the courts for protection.

Public confidence in state commission regulation will not be restored until the people understand from experience that commissions can, of their own motion, take the initiative in rate making and actually determine rates with a minimum of delay and expense.

An air-conditioned telephone booth was displayed to delegates of the United States Independent Telephone Association in Chicago. In exhibiting this logical application of science's recent contribution to human comfort, sponsors suggested that if telephone booth patrons got hot under the collar the cause would be at the other end of the line.

—Associated Press Dispatch, *Richmond News Leader.*

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DAVID LAWRENCE
President, The United States News.

"What the railroads have had is an overdose of 'New Deal' philosophy—thirty or more years of it."

ALBERT SHAW
Editor, Review of Reviews.

"'Yardsticks,' however hastily devised, must be subjected to the Bureau of Standards. They must measure truly and accurately."

WALTER JAMES SHEPARD
President, American Political Science Association, and Dean, Ohio State University.

"If there is any leadership in the New Deal it is the leadership of mounting one's horse and dashing off in every direction at once."

ARTHUR H. VANDENBERG
U. S. Senator from Michigan.

"Any proposition that the President might submit on recovery should be accepted on its face by both parties as necessary legislation and not as a partisan matter."

DAVID E. LILIENTHAL
Power Director of the TVA.

"It is just as intelligent for the coal industry to shake its fist at hydroelectric power as it was for the livery-stable keeper to shake his fist at the first automobile."

Barron's.

"For a nation so devoted to fact-finding bodies of one sort or another, it is surprising how few facts are uncovered and how many words are employed to conceal these few."

ARTHUR E. MORGAN
Chairman, TVA.

"The Authority was willing to pay more than it believed to be the probable cost of making cement at Sheffield and delivering it to the dam sites, rather than to construct and operate an additional plant in an already overbuilt industry."

SAMUEL O. DUNN
Editor of Railway Age.

"The danger of government ownership of railways has never been due to its advocacy. The danger of it has always been due to policies tending to destroy the railways' earning capacity, and thereby to make it necessary for the government to assume their ownership and management."

Why Killing the Holding Company Would Harm the Public

Consideration of the extent to which customers of public utility companies would be adversely affected by the passage of the proposed Public Utility Act of 1935.

BY LUTHER R. NASH

CURRENT discussions of the proposed Public Utility Act of 1935, now under consideration by committees of the Congress, have so far dealt largely with the interests of holding companies and their subsidiaries, and investors in their securities.

It is the purpose of this discussion to examine the extent to which the interests of public utility *customers* would be adversely affected by this Act.

About 80 per cent of all electric power customers are now served by utilities whose securities are owned wholly or in part by holding companies.

The significant concern of customers in their contact with public utilities includes (1) availability of service, (2) reasonableness of rates, and (3) adequacy and dependability of service. Rates under regulation are intended to reimburse the utility for the cost of service including expenses, taxes, and depreciation, and to provide a fair return to investors. Excessive or unreasonable charges included in any of these factors, if they occasion higher rates, are detrimental to the customers' interests.

As far as expenses are concerned the customer is interested to see that the property is operated efficiently and that no excessive charges or fees for operation or management are included. Taxes constitute a rapidly increasing proportion of utility costs and it is to the customer's interest that they be neither excessive nor discriminatory. Charges for depreciation should be adequate but no more. Interest and dividend disbursements of public utilities are necessarily a large proportion of their total payments. The customer properly seeks the determination of a reasonable rate base applicable to a well-designed and well-maintained property from which any arbitrary increases through write-ups or otherwise, or excessive profits

or fees of contractors or engineers are excluded. If the foregoing conditions are *fully* met the average customer does not care who owns the property which provides service for his needs.

For the purposes of this summary the effect of the Act upon customer interests may be divided into two periods: (1) the years from 1935 to 1939, inclusive, which may be called the transition period, during which it is proposed that the activities of holding companies be curtailed, and (2) the years 1940 and thereafter, the permanent period, when it is intended that holding companies shall cease to function and disappear from the utility picture.

The word "commission" used herein may refer to any of the several Federal agencies to which administration of the Act is entrusted. The distinction between them is less significant to customers than to investors and others. Italics have been supplied in certain quotations from the Act. References are to the Rayburn bill, H.R. 5423.

During the period from the passage of the Act until 1940 holding companies, or some of them, may continue to function under the Act with their public utility subsidiaries and certain of their affiliates. Holding companies must register with the commission by October 1, 1935. Unregistered holding companies are not permitted thereafter to engage in interstate commerce, which is understood to include the ownership of securities of other corporations, and transmission or communication between states by use of the mails or otherwise.

By January 1, 1937, all registered holding companies, whose primary holdings are in electric power utilities, must divest themselves of their holdings in other classes of utilities and all nonutility enterprises, with the exception that under certain circumstances an electric utility may continue to operate certain other utility services already owned (with the specific approval of state regulatory authorities), and other operations "reasonably incidental" to electric power business. This may or may not, at the discretion of the commission, include steam heat, real estate, manufactured gas, transportation, and other existing activities. The ownership of natural gas lines or natural gas production facilities is prohibited, as is also any business outside of the United States.[1]

By January 1, 1938, all registered holding companies and every subsidiary thereof must dispose of all security holdings other than those of properties "necessary or appropriate to the operations of a geographically and economically integrated public utility system." The alternative to such disposition is the right of the commission to reorganize or dissolve the company if, in its opinion, its corporate structure is unduly or unnecessarily complicated. If the commission's requirements are met, the holding company may continue its restricted functions until January 1, 1940.[2]

After January 1, 1940, the only authorized field for holding company operation is within a particular state or territory contiguous thereto in

[1] Section 7.
[2] Section 10(b).

a "geographically and economically integrated" area, through certain prescribed subsidiaries, and then only if permitted by state laws and under a certificate which *may* be issued by the commission.[3]

It is now proposed to take a typical customer through the various phases of this regulatory program and examine the effect of each phase upon him. This typical customer, it is assumed, is now served by a subsidiary of a holding company which has widely distributed electric power properties.

It is assumed that both the holding company and this subsidiary will have registered with the commission prior to October 1, 1935. It will also be assumed that no radical changes in status occur prior to 1937, although there is no assurance to be derived from the Act that this would be true. In 1937 the holding company finds it necessary to reorganize the particular utility serving this customer, detaching therefrom utility and other operations determined to be not "reasonably incidental" to the electric power business. All these activities had previously been administered and operated by a common organization. In 1937 this restricted electric power utility is forced to set up an independent administrative and operating organization, the entire cost of which is chargeable to the electric power business rather than being divided as theretofore among several classes of business. The cost of rendering electric service is correspondingly increased. There may be further serious disadvantages if one of the dismembered activities is the gas business. Independently conducted, these two classes of utility service may enter into aggressive and costly competition with impairment of the service of both, instead of leaving the selection of service to the economic advantage of all customers under joint operation.

In due time this utility finds itself in need of additional capital funds. The Act provides that, with certain exceptions, all new financing of solvent utilities shall be either through common stock having a stated par value or first lien bonds.[4] This particular company finds itself with a closed first mortgage covering its entire property, the bonds under which cannot be called before maturity. It is therefore unable to qualify new bonds under the terms of the Act. Its holding company, facing dissolu-

[3] Section 10(b).

[4] Section 6(e).

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tion in a few years, will obviously not purchase additional common stock of this utility, as all its holdings of this character must in the near future be disposed of, presumably with substantial losses. The public will not buy the common stock of a utility where the market therefor may shortly be demoralized by liquidation of other holdings of the same stock. The utility may consider short-term borrowing from the holding company, but the Act limits this to not more than 5 per cent of outstanding capital,[5] and the credit of the holding company may not permit such loans, however trivial and inadequate the amount.

Under such circumstances the operating company sees no way of expanding its property or improving its service other than through the meager supply of cash remaining after its current obligations had been met from income. The inevitable result is deterioration and inadequacy of service, possibly the frequent need of the candles or kerosene lamps of earlier years.

If it had happened that this utility had an open-end first lien mortgage on its property, additional bonds might be sold within certain limits, but such sales would tend increasingly to unbalance the company's financial structure, narrow the margin of income available for interest charges, and correspondingly increase the yield which investors would require before providing additional funds. Such higher costs of money would mean higher rates for the customer's service.

If this company had maturing obligations which it was unable to meet through issue of the prescribed new securities, although otherwise meeting all its obligations, the commission is authorized to apply § 77B of the Bankruptcy Act and take possession of the company under a provision that the commission be appointed by the court as sole trustee of the property. The commission may then proceed to reorganize, dissolve, or dismember the property in any way that it could convince the court was appropriate. Through such means the commission might, in due time, gain direct control of substantially the whole of the electric power industry.

The Act contains certain provisions for continuation of existing types of outstanding securities, for refunding purposes, with the approval of state regulatory commissions, but there is no assurance that the present conventional capital structure of bonds, preferred and common stock which has been developed to meet the needs of various classes of investors would or could be subject to general approval for unrestricted use. The Act further provides that the holding company may not extend its credit or indemnify a subsidiary other than by authorization of the commission, and the subsidiary itself is not permitted to pay dividends except under conditions specifically prescribed by the commission.

Security issues, if or when the commission's requirements therefor can be met, must have specific approval (in addition to others already necessary) of the commission in each case, through the filing of elaborate schedules of information requiring

[5] Section 5(b).

The Reporting Burden

"THERE *is apparently no limit to the number of regular and special reports which the commission may require from all registered utilities. . . . Not only the records of the company but those of 'any person who controls or influences in any manner, directly or indirectly, a license or public utility' are subject to examination."*

extended study by the commission and material delay in issue of the securities. Such delay may prevent the company from taking advantage of temporarily favorable market conditions and thereby increase the cost of its money. The commission may attach stringent restrictions upon the sale of securities to investment bankers including a requirement of competitive bidding therefor, which has not in the past been found generally advantageous. The proceeds of security sales must be spent for specifically authorized purposes and no overruns are permitted without specific additional authorization, all of which requires time and expenditure.

FURTHERMORE, in connection with any application for security issue, the commission may make a study of the existing capital structure of the company, require changes therein, and also changes in other methods and practices of the company which may extend even to orders affecting labor relations, the establishment of extravagant pension or retirement funds with the necessary accruals therefor, or other irrelevant conditions. These various factors, known to investment bankers and discriminating investors, will inevitably lead to higher costs which must be taken care of through the utility's rate structures.

The only way readily to secure capital funds is to make investment attractive. There is nothing compulsory about the matter.

AN important feature of the Act is its provision for regulation of operating as well as holding companies. Section 217 stipulates that "nothing in this title shall be construed to impair or diminish the power of any state commission." That this is an empty gesture is obvious from other voluminous provisions which in fact give the commission complete jurisdiction over registered public utilities with the exception only of distribution *facilities* devoted ex-

clusively to retail service. This involves a substantially complete duplication and perhaps conflict of regulatory functions, for the state commissions are required under their several statutes to discharge the responsibilities defined therein. These regulatory functions are supported either through direct assessment upon utilities or by general taxation in which the utilities share. In either case they are a part of the cost of service for which customers pay.

The Act provides for commission approval of all extensions to, changes in, or abandonment of property or service and any change in the character or scope of service as well as issue of securities and other details. The time and expense involved in preparing such applications, their consideration by the commission, and other routine are obviously significant.

In order that there may be no uncertainty as to the scope of the commission's supervision, § 11 (g) makes it unlawful for any registered utility to "enter into or take *any* step in the performance of *any* transaction not otherwise specifically covered by this title" with any other unit in its holding company system without commission approval, embodied either in rules and regulations or specific orders. These provisions clearly cover supervision of all contracts for purchase or sale of property, materials, or service.

Control over rates is also specific and complete, duplicating fully the functions of state commissions in addition to control of interstate transactions not clearly covered by the state laws.

Accounting methods are, of course, prescribed and serious conflicts are possible as a majority of the state commissions have adopted a uniform system of accounts for electric power companies differing from those so far used by the Federal Power Commission and other governmental agencies.

There is apparently no limit to the number of regular and special reports which the commission may require from all registered utilities. In connection with its examinations of utility operations, the commission may require that there shall be delivered to it "copies of *any or all* maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way related to its property or affecting its business." Not only the records of the company but those of "any person who controls or influences in *any* manner, directly or indirectly, a license or public utility" are subject to examination.[6] Section 305 (b) further states that "attendance of witnesses and the production of any such records may be required from *any* place in the United States."

Heretofore regulation has developed under the assumption that the field of regulation should be so restricted as to make it possible for regulatory personnel to acquire and maintain detail knowledge of the character and operations of regulated utilities, of the industries served, and of the habits and views of customers. Obviously a Washington bureaucracy could not qualify under such policies, and, based on recent experiences, arbitrary rulings detrimental to customer

[6] Section 301(b), (c).

interest and good will might be expected.

While § 214 (a) provides for joint boards made up of state representatives for consideration of local matters, such boards apparently have no authority and the commission may disregard the state's wishes in the appointment of representatives thereon. The commission has full authority either to reject or adopt any suggestions or recommendations of such joint boards.

THE preceding discussion has dealt with the interests of utility customers during the transition period throughout which some of the holding companies have survived. It is now in order to consider the permanent effect of this Act upon customers' interests after holding companies have been wholly or in large part excluded from the utility field. Three fairly distinct sets of conditions are possible which justify separate treatment:

1. A subsidiary utility operating in one state owned by a holding company functioning in this same state and/or contiguous territory.
2. An independent utility operating in one state but with transmission connections to utilities in other states.
3. An independent utility operating in one state with no interstate connections.

The conditions existing under (1), the subsidiary utility situation, need little further consideration because of their similarity to those already discussed in relation to operating utilities during the transition period, or because of the limited number of such combinations which will probably exist. This limitation in number may be due in part to the provision embodied in the Act that the commission may exercise its discretion, not only to register intrastate holding companies and operating utilities but also to withdraw such registration if in the judgment of the commission their continuance is not warranted.

The advantages of interconnections between utility units are not limited to holding company subsidiaries but are also available to independent companies which may and do enter into advantageous arm's length agreements for interchange of power at minimum overall cost. Lack of diversity in peak-load periods and in business characteristics within a limited area tend to restrict the advantages of such interconnection in such areas, and this lack of diversity as compared with the wide diversities found in a farflung holding company system is significant. Substantial reductions made through these larger systems in both investment and operating expenses are matters of record, as are corresponding rate reductions, particularly to small customers.

The development of certain of these proposed state or regional systems would be subject to restriction on account of local laws which prevent the

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ownership of utility stock by another corporation.

THE conditions to be considered under (2), independent utility with connections in other states, include not only independent utilities operating in a single state, with transmission connection with similar companies in other states, but also the condition under which production and sale are exclusively within the state but with lines looping into another state, in passing from one intrastate district to another, even though no connections are made to the lines in the adjoining state.[7]

Such utilities, although engaged solely in intrastate *sales* which are now clearly subject to state regulation, are brought under the supervision of the commission with all the regulatory features heretofore outlined. Other provisions, some also applicable to the transition period, are significant.

THE commission has control over *all* transmission and production facilities owned by the company. Retail distribution *facilities* are excluded but not those for large-scale service. There is no exclusion of *business* done on any part of the system or of rates applicable thereto.

Section 202 (a) provides that every registered utility shall be prepared to buy, sell, or exchange electric energy, or transmit it for *"any person"* and furnish necessary facilities therefor. "Any person" might be an industry generating its own power in a certain city and wishing to supply also a branch factory in another locality, a competing private utility (where such are permitted) wishing to supply a prospective customer (perhaps previously served by the registered utility) without constructing its own line extensions for that purpose, or a government agency seeking to serve its scattered branches through its own central plant.

IT is the duty of the commission to prescribe the conditions under which such service would be rendered and to fix compensation therefor. Possibilities of substantial burdens upon utility customers from inequitable use of utility facilities by others, or from carrying charges on facilities ordered by the commission for such use but no longer used, are obvious.

The Act goes even further in looking to the establishment of "regional districts"[8] with respect to which the commission fixes the source of all production, dictates the addition or abandonment of generating capacity, arranges or rearranges interconnections and their use, all in possible disregard of existing corporate rights and obligations, all to carry out the commission's conception of "an abundant supply of electricity." The added burdens on customers of a particular locality, or all customers, by uneconomical or political disruption of existing systems can readily be visualized. These systems are the result of long experience and careful studies by competent engineers and executives seeking maximum economy in power production and distribution. Existing interconnections are not only not confined to one holding company group, but practically all of these groups are tied together throughout

[7] Section 201(b).

[8] Section 203.

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The advantages of interconnections between utility units are not limited to holding company subsidiaries but are also available to independent companies which may and do enter into advantageous arm's length agreements for interchange of power at minimum overall cost. Lack of diversity in peak-load periods and in business characteristics within a limited area tend to restrict the advantages of such interconnection in such areas, and this lack of diversity as compared with the wide diversities found in a far-flung holding company system is significant. Substantial reductions made through these larger systems in both investment and operating expenses are matters of record, as are corresponding rate reductions, particularly to small customers.

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The Act goes even further in looking to the establishment of "regional districts" [8] with respect to which the commission fixes the source of all production, dictates the addition or abandonment of generating capacity, arranges or rearranges interconnections and their use, all in possible disregard of existing corporate rights and obligations, all to carry out the commission's conception of "an abundant supply of electricity." The added burdens on customers of a particular locality, or all customers, by uneconomical or political disruption of existing systems can readily be visualized. These systems are the result of long experience and careful studies by competent engineers and executives seeking maximum economy in power production and distribution. Existing interconnections are not only not confined to one holding company group, but practically all of these groups are tied together throughout

[7] Section 201(b).

[8] Section 203.

Qualifications of Directors

"UNDER present conditions directors of public utilities may be, and are, men of experience in operation, administration, or financing of a considerable number of utilities and are therefore of distinct value to the properties which they serve. The Act contemplates that directors shall be laymen, without broad experience in their field of service, and therefore unable to bring about the economies in operation, construction, and financing to which customers of the utilities are entitled."

the eastern states. Interchange of power between systems and units is already closely, although flexibly, controlled in the interest of economy of production and capital expenditures for production facilities. Up to this time no significant classes of business in the United States have ever been conducted on a regional basis.

THE provision for commission supervision over property additions and abandonments, already referred to, does not contemplate blanket orders for routine procedure but the specific approval of the commission with respect to *"all* or any portion of its facilities."[9] It is the present custom of progressive utilities to supply their customers with service on the same day on which application therefor is made. If, under the Act, extensions of lines or even new services only were required, and that part of the distribution system involved was not devoted exclusively to retail service, prospective customers' applications for service must be held up until formal authorization is obtained from the commission, which might be a matter of weeks or months. The resulting annoyance and inconvenience to prospective customers are obvious.

The Act proposes that the commission shall assume jurisdiction over the facilities and services of all utilities to which the Act applies as to adequacy, safety, and suitability, to fix standards of voltage and its regulation, and to be prepared to test *"any and all"* measuring appliances. This might include the 30,000,000 meters which are now installed for recording utility and customer energy use.[10]

REFERRING more specifically to regulation of rates, it is provided that every public utility must file with

[9] Section 204(b).

[10] Section 210(a).

the commission schedules of *"all* rates, charges, classifications, and services collected or enforced or to be collected or enforced, together with all rules, regulations, and contracts which *in any manner* affect or relate to such rates, charges, classifications, and services."[11] No change may be made "in *any* rate" without notice to the commission and its approval. The commission may fix the time of effectiveness and the "manner in which they shall be filed and published."[12] There are the usual provisions for hearings, suspensions, refunds, etc. The commission may, on its own motion, investigate all rates or a "single rate" with respect to "unjust, unreasonable, discriminatory, or preferential" features and order any desired change, which is "to be thereafter observed."[13]

The adjustment of electric rates has always been an intricate and delicate task, with many political as well as economic angles and repercussions. The subject has been studied intensively for many years by some of the ablest men in the industry. Readjustments, ordered by the commission on some theoretical basis, might readily cause a loss of many wholesale customers who now contribute to distributable income, which loss would require increase in rates for all remaining services. If rates were readjusted on the basis of accurate cost analyses, increases might result in bills of millions of customers. Political considerations and favoritism might lead to equally disastrous results.

[11] Section 207(a).
[12] Section 207(b).
[13] Section 208.

COMPREHENSIVENESS and possible conflicts involved in a new prescribed accounting system have already been referred to. The Act requires the adoption of a system of depreciation accounting differing from the uniform system now in effect in most of the states and from the systems prescribed by other governmental agencies, including the income tax bureau. These provisions are, in fact, different from those embodied in any generally used system of accounting, and might require such increases in charges over those involved in prevailing practices as to furnish another reason for higher customers' bills.

Section 304 (a) provides that without specific approval of the commission no person shall be an officer or director of more than one public utility. Under present conditions directors of public utilities may be, and are, men of experience in operation, administration, or financing of a considerable number of utilities and are therefore of distinct value to the properties which they serve. The Act contemplates that directors shall be laymen, without broad experience in their field of service, and therefore unable to bring about the economies in operation, construction, and financing to which customers of the utilities are entitled.

SECTION 309 authorizes the commission to conduct investigations of electric power systems throughout the United States "whether or not otherwise subject to the jurisdiction of the commission."

The significance of the word "otherwise" is not clear. The vision of usefulness behind this section war-

rants the following further quotation:

> It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of *all* facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relation between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of *any or all* such fact to the development of navigation, industry, commerce, and the national defense.

The cost to Federal taxpayers, among whom are utility customers, by this duplication of work, already largely done by the state commissions, would obviously be stupendous if the Act were literally interpreted. Such interpretation would, of course, provide jobs for a host of deserving candidates for public office.

SITUATION (3) of the classification of utilities in a permanent status, above referred to as requiring separate treatment, includes independent power companies operating in one state with no interstate connections. The absence of interstate connections may be due to a determination to be free from inquisitorial and dictatorial supervision of Federal agencies and the intolerable delays resulting therefrom, even though interconnections might result in a substantial saving in operation or investment in facilities. In this event, these higher costs would be reflected in rates for service.

If such a utility now has an interstate connection and desires to revert to an independent status, it must definitely and conclusively abandon this interconnection prior to the passage of the Act, as otherwise it would be subject to § 204 (b) which requires that no public utility shall abandon *any* portion of its facilities without approval of the commission. Obviously, if the commission thought an existing interconnection was useful to it in the carrying out of its dream of regional coördination, it would not consent to abandonment.

THE Act does not make an intrastate utility subject to commission jurisdiction if it has interconnections only with other independent companies in the same state which are similarly without interstate connections. Every such local utility should, however, understand that any interconnections are made at its peril, because if another utility with which interconnection was made, established thereafter, without notice, an interstate interconnection, commission control of the *entire* interconnected system would automatically become effective. Apparently such local interconnections would be safe only in Maine, where a state law prohibits export of

¶ "AN *important feature of the Act is its provision for regulation of operating as well as holding companies. Section 217 stipulates that 'nothing in this title shall be construed to impair or diminish the power of any state commission.' That this is an empty gesture is obvious from other voluminous provisions. . . .*"

electric power, and even there only partially so, because no prohibition exists against imports. It is by no means clear that the Act does not permit the commission to require a registered utility under its jurisdiction to establish an interconnection with an independent, intrastate utility, thereby forcing the latter to accept regulation and surrender its former control over its own facilities and business. This would remove the final barrier to Federal control of the entire industry.

It will be of interest to consider certain other disadvantages which may apply to such local utilities from the passage of this Act, although they are not directly under its jurisdiction, because of its contemplated dismemberment of existing utility groups and the improbability of voluntary regrouping along regional or other lines dictated by the commission.

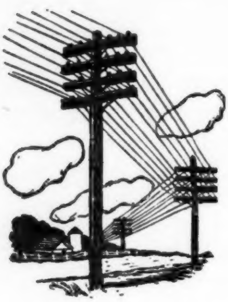
THE general effect of the Act would be to restore electric power companies to their status before holding company influences became effective. The electric power census of 1912 furnishes the most convenient point from which to measure the usefulness of holding companies in expanding and intensifying the activities of operating utilities. Prior to that time the efforts of holding companies had been directed primarily to financing and engineering functions. In later years increasing attention was paid to commercial methods, rate practices, and other efforts tending to develop and expand business as well as property.

In 1912 only 21 per cent of all homes, exclusive of farms, were supplied with electric service. By 1930, under holding company supervision, this percentage had increased to 85. Obviously, holding companies should not be credited with all this increase, as it was due in part to engineering refinements and normal growth in business, requiring larger and more efficient facilities.

If the same influences which occasioned the growth of service up to 1912 had continued uniformly and progressively until 1934, the percentage of homes having electric power service would have been less than one half those which actually had such service in 1934. The balance should be credited largely to holding company activities.

PRIOR to the advent of holding companies, utility common and even the preferred stock had no ready market, and bonds were not salable beyond certain conservative ratios of total debt to investment and of distributable income to interest requirements. Existing stockholders were not able or willing to add enough equity money to permit free expansion. The holding company, because of its wider credit and diversity among its holdings, could sell a wider range of its own securities, and also strengthen the market for utility bonds and preferred issues. The resulting market expansion has benefited customers through lower rates, resulting from more efficient operation with facilities of steadily increasing size and consequent lower unit cost. Reversion to isolated utility operation would not only deprive outlying areas of service otherwise made available but also urban customers, while having service, would pay, as they

Effects of Isolated Operation



"REVERSION *to isolated utility operation would not only deprive outlying areas of service otherwise made available but also urban customers, while having service, would pay, as they formerly did, higher rates because of restricted service and facilities. The job of expanding and extending electric power service had by no means been finished. Both the isolated utility and the regional coördinated districts proposed in the Act would lack a further distinct advantage secured through holding companies."*

formerly did, higher rates because of restricted service and facilities. The job of expanding and extending electric power service has by no means been finished.

Both the isolated utility and the regional coördinated districts proposed in the Act would lack a further distinct advantage secured through holding companies. Limited areas have, or tend to have, uniform business and industrial conditions. They have either depression or prosperity throughout, with ups and downs of return to their investors.

HOLDING companies through intentional wide separation of their utility units are able to diversify their operations and minimize the effect of business fluctuations. A drought may affect an entire state or regional district, but other units of a present holding company system may be enjoying industrial prosperity. Such increased stability, while primarily to the advantage of investors in holding company securities, adds also to the credit of the operating company with resultant lower cost of money and lower rates for service to its customers. The ability to balance the profits of industry in one locality against the losses in another has been characterized by the Federal Trade Commission as a "very important advantage."

Public utilities now have to a large and increasing extent through affiliated companies the benefit, at cost, of trained executive and engineering supervision and, in some cases, skilled construction forces all continuously acquainted with their particular needs and problems. Such continuous and intimate contact with utility requirements rather than intermittent or piecemeal contacts makes possible a program of long-range planning and a degree of efficiency in operation and economy in capital expenditures not otherwise obtainable. The cost of a similarly competent organization for individual utilities would be prohibitively large.

IT appears to be the intent of the Act to encourage mutual service companies, but its ultimate effect may be to destroy those now existing, and remove any incentive to the organiza-

tion of others. This will come about because, when holding companies are abolished, their service affiliates, lacking direct supervision, encouragement, and incentive, will tend to disappear. Independent management, engineering, or other similarly operated service organizations would not take their place because such organizations, like other businesses, are undertaken and operated for a profit and not at cost. The charges of such independent organizations would be higher than those now prevailing in many of the large holding company organizations. This would mean higher fixed capital charges or increased operating expenses or both and consequently higher rates.

An independent, interstate utility would probably be required, under the Act, to submit all such service requirements to competitive bidding, and would receive from the successful lowest bidder less satisfactory and dependable service than from a regularly employed agency having knowledge of its property and operating requirements. Experience has shown that competitive bidding for recurring services is expensive in the long run.

WHILE these intrastate utilities would not be restricted as to officers and directors their field of choice would naturally be far more limited than under the present holding company conditions.

Apparently even independent intrastate utilities are not free from certain other blanket provisions of the Act. Section 12(d) provides that no construction contract may be made by any contractor doing interstate business with "*any* public utility company" without subjecting himself to rules or regulations which provide for reports, cost accounting, disclosure of interest, and other burdensome and exacting requirements. No builder or manufacturer who supplies complicated power facilities could conform to such requirements without material increase in his prices which would ultimately be reflected in utility fixed capital and rates.

Section 215 is even broader in its scope, as the following quotation shows:

> It shall be unlawful for *any person* to make use of the mails or any means or instrumentality of interstate commerce to perform *any service* or negotiate, enter into, or take *any steps* in the performance of *any contract* with a corporation engaged in the business of selling or distributing electric energy in the public service in contravention of such rules or regulations or orders regarding reports, accounts, competitive bidding, disclosures of profits, duration of contracts, and similar matters as the commission may prescribe. . . .

APPARENTLY no independent attorney, accountant, engineer, or any other individual, bank, or other organization could undertake work for a utility in another state without endless formalities, reports, etc., all of which become public records. The obvious result is less reliable and efficient performance of service and other contracts, and higher costs. All such factors will, to say the least, tend to stop that downward trend of rates which customers have continuously (with minor exceptions) enjoyed throughout the period of holding company activity.

The customer finds in § 1 of the Act a clearly stated intention "to provide at the end of the five years for the abolition of the public utility holding company." Qualifications appear-

ing subsequently in the Act do not essentially modify this intention.

The charges contained in the preamble of § 1 in support of this program, as far as they directly concern the customer, are:

1. That utility property values have been inflated;
2. That utilities have paid to their holding companies or affiliates excessive fees for management, engineering, construction, and other services;
3. That holding company subsidiaries are grouped without consideration of geographical coördination or maximum economy of operation; and
4. That control of holding companies is beyond the power of state regulatory commissions.

ALL these shortcomings are assumed to result in higher rates. There is no criticism of the scope and character of electric power service; in fact, it is well known that there has been an uninterrupted and pronounced improvement, particularly in the outlying sections where interconnections have brought regular 24-hour service instead of unreliable and inefficient night or evening service, or none at all.

Nor is it denied that during the holding company régime there has been a reduction of nearly 50 per cent in average rates, at least with respect to domestic service in which the public interest centers. The customer has experienced no other reductions approaching this amount in any other significant items in his family budget which, although including electric service, has as a whole increased within the same period more than 100 per cent and is still about one third higher than in pre-holding company days. This does not support any general indictment of all holding companies.

Inflation of capital might have a tendency to increase rates, although regulatory processes do not recognize capital structures, but the customer understands that there are now not less than three agencies to prevent overcapitalization, the regulatory commissions in many of the states, state blue sky laws, and the Federal Securities and Exchange Commission. All these agencies, except the first, have supervision over holding company as well as utility security issues. It has, in fact, been contended that the last-named commission has been so strenuous in administering the law as unduly to restrict or prevent business expansion essential to recovery.

WITH respect to holding company fees, which may affect both fixed capital and operating expense, it appears that various state commissions, backed in many cases by amended regulatory laws, have refused to approve any such charges without clear proof that they were consistent with the cost of the service to the agency rendering it. This matter has been under regulatory consideration for not

¶ "A STEP-BY-STEP *analysis of the provisions of the Act discloses that the various features intended to protect the utility customer have already been provided for, wholly or in part, by existing state or Federal legislation, or can readily be provided for by simple supplements to the latter. . . .*"

less than twenty years, and laws requiring proof of cost for more than ten years. In some instances it is required that only *reasonable* costs will be approved, any extravagance in expenditures coming out of the owners' pockets. Such procedure has been affirmed by the courts, including the United States Supreme Court. Recent amendments to state laws require the filing and approval of service contracts before they become effective, thereby definitely excluding excessive charges. It is the opinion of these commissions, according to published reports, that this procedure provides them with an adequate remedy, and that no Federal action relating thereto is needed or desired.

THE customer is bewildered by the complexities and widespread activities of many holding companies, industrial as well as utility (there being a far greater number of the former than of the latter) but with a continuation of present steps toward simplification in the utility field, he is skeptical of any advantages resulting from governmental dismemberment and realignment in the hands of inexperienced theorists, or of any possible added economy of operation resulting therefrom. He would prefer to see an orderly simplification under the supervision of the Securities and Exchange Commission, and believes it should be undertaken expeditiously. The reports of the technical staff of the Federal Trade Commission have been highly commendatory of the engineering skill and sound economics embodied in the large holding company systems and their interconnections.

IF the average electric customer were asked whether availability and reliability of service were more important to him than the price he pays for it he would, if he had given the matter thought (which relatively few customers have), readily admit or assert that his service was worth far more than its cost, and that any governmental activities which tended to curtail or impair present dependable service were of much more concern to him than some possible moderate reduction in its price. It is not clear to him why there should be a nation-wide agitation over this item, amounting to about one per cent of his family budget.

It may be true that the state commissions cannot directly control the affairs of holding companies unless they also carry on utility operations. They have, however, control over every important avenue of their contact with operating companies, including their fees and, to some extent at least, prices which regulated utilities pay to them or to affiliated companies for purchased power even when interstate transmission is involved. They can also control changes in ownership of regulated utilities and prices paid therefor.

AS between the two fields of regulation, state and Federal, the customer will vote for the former if he understands all the complications and implications of the latter. He may visualize in the Act a purpose to establish a precedent for future control and realignment of *all* corporate activities, and this would affect him far more as a citizen than as a utility customer.

Red Tape and Added Cost

"APPARENTLY *no independent attorney, accountant, engineer, or any other individual, bank, or other organization could undertake work for a utility in another state without endless formalities, reports, etc., all of which become public records. The obvious result is less reliable and efficient performance of service and other contracts, and higher costs."*

IT does not appear that repeated claims, that "regulation has broken down" are supported by the record of repeated rate reductions and service improvements and extensions which have been brought about thereunder. Many of the past failures of regulation have been due to inadequate appropriations for which legislatures rather than commissions are responsible. If a very small proportion of the vast sums required to administer the program embodied in this Act was applied to increasing the personnel and compensation of existing state agencies, the occasion for continued criticism of their accomplishments would largely disappear. Their knowledge of local conditions and needs and their ability to give them prompt and sympathetic attention is an asset which should be neither curtailed nor destroyed.

Our present system of state regulation of public utilities has developed during the past thirty years from an isolated experimental stage to a coördinated system covering nearly every state in the Union. Through a national organization and its standing committees, the members of the various commissions have exchanged experiences and adopted such uniformity in methods of procedure as regulatory laws permit and special local conditions make expedient. That these local conditions play an important part in the solution of regulatory problems in widely separated parts of the country is disclosed by a study of the important decisions of the commissions which, for the past twenty years, fill more than 100 standard legal volumes.

THIS Act would duplicate the work of these commissions, and deprive their 172 members of all but a negligible part of their present authority and duties, and their staffs of hundreds of employees, trained and skilled in their respective local duties, after becoming a helpless and useless burden, would duly disintegrate. It is inconceivable that a national bureaucracy could handle the many essentially local regulatory problems without endless confusion, bungling, arbitrariness, and intolerable delays, all of which would be reflected in the customers' service and rates.

With state regulatory authority already provided, and confirmed by unquestioned court decisions, over hold-

ing company charges and other utility relations, utility capitalization and security issues, changes in utility ownership, and other matters which constitute the major features of the Act, the apparent outstanding purpose of the Act is to override states' rights and destroy a system of regulation which has functioned with increasing effectiveness with the passing of the years. Those who are inclined to question this effectiveness, because of appeals to the courts and injunctions against commission orders, may well note that in most of these cases the courts have found overzealousness in the customers' interest rather than negligence.

It is noteworthy that none of the state or previous Federal regulatory laws have paralleled or even approached the provisions of the Act with respect to their usurping the powers and duties of management and their destruction of incentives for efficiency and progressiveness, all of which are of vital interest to customers.

FEDERAL regulation of interstate power movements including a fixing of *wholesale* rates therefor may be needed to supplement the regulation which existing state agencies can effectively perform. The same results might, however, be accomplished by joint *responsible* boards made up of members of the state commissions concerned, with the Federal Power Commission or other Federal agencies as advisers or arbitrators. A procedure of this kind is under consideration by the Congress in connection with interstate highway transportation.

THE customer is a taxpayer. He is paying for state regulation, either through regular channels or direct assessment of the utility serving him. He is not disturbed over this cost because of the results which have been accomplished. He is, however, appalled at the added burden which he and other taxpayers would shoulder to support a vast army of executives, economists, engineers, examiners, rate experts, accountants, inspectors, attorneys, clerks, and others necessary to carry on the stupendous program visualized in and authorized by the Act. As a customer he has observed a steadily growing tendency to place the burden of added governmental costs on the shoulders of public utilities which, with few exceptions, are authorized to include them, directly or indirectly, in their customers' bills. This may, perhaps, be accounted for in part by the fact that power company groups have been so well managed throughout the depression, and have not called upon the government for financial assistance, as have certain nationally regulated utilities and other industries.

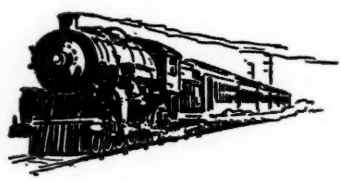
A STEP-BY-STEP analysis of the provisions of the Act discloses that the various features intended to protect the utility customer have already been provided for, wholly or in part, by existing state or Federal legislation, or can readily be provided for by simple supplements to the latter, and that further corrective details can be developed by reinforcement of state regulation at far less expense and much greater effectiveness than through Federal agencies.

A familiar proverb warns us not

to put all our eggs in one basket. We now have regulatory baskets in practically all the states, some containing more than one regulatory agency. The Act proposes, in effect, that all the regulatory functions shall be concentrated in one basket located in Washington.

The state regulatory commissioners have made mistakes, like all other human beings. These mistakes are, however, limited in their effect to the restricted fields of the separate commissions. They do not all make the same mistakes, and they may not all make mistakes at the same time. If a single Federal agency had such comprehensive and unrestricted powers as are contemplated by this Act, the widespread effect of errors resulting from ignorance, poor judgment, bias or political pressure would be disruptive of an entire industry, one of the largest and most useful in the country.

In a very recent utility decision (January 7, 1935) the United States Supreme Court, speaking through Mr. Justice Cardozo, said: "When a business disintegrates, there is damage to the stockholders, but damage also to the customers in cost or quality of service."



Facts about the Carriers

THE mileage or railway line in the United States reached its maximum in 1916, when it was 254,251. It is now less than 244,000 miles.

* *

THE average speed of freight trains in the first ten months of 1934 was 15.9 miles per hour, or 25 per cent greater than in 1929 and 54 per cent greater than in 1920.

* *

THE total railroad mileage of line abandoned in 1933 was 1,876 miles, and in 1934 it was 1,995 miles, the largest mileage ever abandoned in any year in the history of the United States.

* *

PURCHASES of equipment, materials, and supplies made from all manufacturers in 1934 were about twice as great as in either 1932 or 1933, but less than half as great as in pre-depression years.

* *

THE first run, on regular schedule, of the Chicago and North Western's new "400" passenger train, between Chicago and St. Paul, January 2, 1935, was made in a minute and a half less than the seven hours scheduled. The first run from St. Paul to Chicago was clocked exactly on time. The average speed on the westbound trip, for the 410.6 miles, was 58.4 miles an hour, claimed by North Western officials to be the fastest regularly scheduled trip of equal distance anywhere in the world.

What Others Think

Harnessing the Tide of Fundy

FROM time immemorial the ceaseless ebb and flow of tides have intrigued the imagination of men who have pondered the possibility of harnessing this vast and eternally restless energy for man's own purpose. In the Bay of Fundy, landlocked by the rock-bound coast of Maine, nature has provided a natural trap for the tidal waters which can, in the opinion of many engineers, be converted to the use of mankind through the generation of electric energy. In fact there is little doubt among the engineers that this can be done, but there seems to be considerable doubt as to whether it is economically feasible in view of the prevailing marketing conditions for power in the surrounding territory of Maine. Geographically, the location is said to be perfect because in this great arm of the Atlantic ocean the tides rise as high as 60 feet and rush through a 140-mile channel with remarkable force. Small wonder that this unusual natural condition should inspire engineers such as Dexter P. Cooper with the hope that the tidal waters can be made to turn turbines. Mr. Cooper originally started a private enterprise for the purpose of carrying out his great dream. But this stalled because of unfavorable financial and other conditions.

Then blossomed the idea that the Quoddy development, as it is called, would fit perfectly into President Roosevelt's new public works program. The plan was kicked around as a political football in the last state campaign in Maine but never seemed to make much of an impression at Washington. Recently, however, it has bloomed into full vigor as an immediate possibility. It must be recognized, as has been pointed out by the *St. Paul* (Minn.) *Pioneer Press* that the Quoddy project possesses at least one advantage which ordinary hydroelectric projects do not possess; namely, that the ebb and flow of the tides is absolutely dependable and is not affected by drouths and floods as is the case with many hydroelectric projects.

THE editorial comment in the *Pioneer Press* is evidence of the nationwide attention that is being given the proposed Quoddy project. This is perhaps inspired by the very novelty of the thought that the ocean's tides can be put to work for man's living. The editorial continues:

> It must be admitted there is something fascinating about the idea of harnessing the tides of the Bay of Fundy at the tip end of Maine and converting this great ebb and flow into electricity.
>
> But for the fourth time an adverse report on the proposed project has been turned in by experts. In spite of engineers' findings that it is "economically unsound," the plan's advocates, including Governor Brann, have not let up in their appeals for Federal help. A report of last spring that power developed at Passamaquoddy would not be "cheap power" led the Public Works Administration to reject the application for a loan of 47 million dollars. All investigating boards have agreed that the power produced would be too costly and that no market for power existed in that sparsely populated section. In fact, the power generated would cost as much if not more than power generated by steam plants.

The "fourth adverse report" mentioned above had to do with a report of a special commission appointed by Secretary of Interior Ickes which was understood to have approved a $32,000,000 allotment by the Public Works Administration to the President for the Quoddy project "without recommenda-

tions." The chief obstacle to the development always has been the lack of market for the power, but those now backing it as a public works project are confident it will make good once it has been constructed. At any rate, as the *Kennebec* (Me.) *Journal* boldly points out, "it will bring some $50,000,000 into the state, to be expended in a section where it is needed as much as anywhere." Although subordinate officials of the PWA had previously reported somewhat unfavorably on the proposed Quoddy project, the Federal administration was induced to suspend judgment until more information could be furnished. Anticipating a Federal allotment, Governor Brann, of Maine, has already undertaken to recommend to the state legislature the enactment of laws designed to facilitate the creation of a publicly owned corporation somewhat similar to the Tennessee Valley Authority for the purpose of constructing and operating the Quoddy project. More specifically, there was proposed in the Maine legislature a bill for the establishment of the "Passamaquoddy Bay Authority." At this writing this bill appeared to have a fair chance of enactment.

It is interesting to note an adverse analysis of this proposed legislation by W. R. Pattangall, chief justice of the Maine Supreme Court, who is a son of eastern Maine, the section in which Passamaquoddy Bay is located. In a letter to the editor of the *Bangor* (Me.) *News,* Judge Pattangall points out the sweeping powers that would be given the new authority, a corporation of perpetual existence. Among these powers would be the right of eminent domain together with authority to acquire, purchase, lease, or otherwise dispose of any property real or personal, tangible or intangible, without any limitations. The act authorizes the manufacture, production, sale, and distribution not only of hydroelectric energy, but also of steam-generated electricity throughout the entire state of Maine. It would also be authorized to sell power outside of Maine which would probably conflict with the traditional Maine policy of restricting the exportation of locally generated electric power, presently known as the Fernald act. Judge Pattangall also developed the surprising fact that the act does not indicate any intention on the part of anybody to build a dam at Passamaquoddy bay, but does place under the control of government "every resource of the state" without limitation as to the time or amount of money involved so long as capital may be furnished by either private or Federal agencies. In other words, Judge Pattangall concludes that the proposed Passamaquoddy bay act is an attempt to develop the policy of public ownership generally throughout the state under the disguise of a misleading title, and further that those who were responsible for proposing this legislation are attempting to "cash in" on the popular approval and anticipation of the Maine people for the proposed Quoddy dam by slipping over a blanket authority for state ownership at Maine, which may not even include the long-awaited Quoddy dam. Judge Pattangall concludes:

> In other words, for a possible expectation of governmental aid in the Passamaquoddy development, the people of Maine are to place their industrial assets in the hands of five men to be named by the governor of Maine, who are given more authority than is now possessed by the state government itself. This would be a tremendous price to pay for the building of the Cooper dam, even if that was assured. But it is not assured directly, nor by any inference to be drawn from the bill, excepting that the words "tidal power" appear twice in the enumeration of property to be absorbed by the corporation.

Concerning the desire of the people for the Quoddy project, however, there can be little doubt. The usually conservative *Kennebec* (Me.) *Journal* probably expresses the attitude of even those Maine inhabitants who have some doubt in their own minds whether the Quoddy dam would ever pay as a commercial proposition. It stated editorially in part:

The Washington Post

ABOUT TIME

This project, therefore, is almost ideal for a part of the new public works program and as such is getting its strong backing. The $50,000,000 required will be but a drop in the bucket compared to the total of four billions to be expended and so unusual chances can be taken. It can be justified almost as "made work," for it will take care of unemployment in eastern Maine for several years. Whether it's ever profitable as a "going concern," once it has been constructed, remains to be seen but authorities at Washington may look far without finding a better place to spend subsistence funds.

Critics of the administration, however, see in the proposed Federal financing of the Quoddy project the paying of a political debt by the Federal administration in compensation for a

Democratic state victory last year. Typical of this attitude was a caustic editorial in *The Washington* (D. C.) *Post* which stated in part as follows:

> Governor Brann of Maine is now out to improve upon the feat of the politicians from the Northwest. After a visit to the White House he is convinced that the President will approve a $30,000,000 experiment in creating power from Passamaquoddy's tides. Even if the scheme is feasible from an engineering point of view, the use to which a vast supply of power would be put in northern Maine is a mystery. In these circumstances the administration will find it difficult to escape the suggestion that the strongest arguments in favor of the Passamaquoddy project are the campaign promises of Governor Brann.

COMMENT on the political complexion of the Quoddy proposal recalls a somewhat amusing retort made by a local candidate for office last year who professed to be strongly in favor of the Quoddy project. Someone had raised the usual objection that there was no market in northeastern Maine for electric power even if it were developed at the Bay of Fundy. In characteristic Maine fashion he parried the question with another question: "How do you know there can be no market for power in northeastern Maine? Would it not be necessary to build the plant before we could ever find out for sure?" This question seems somewhat similar to the reply of the show girl to a casting director who wanted to know if she could play a violin. She said: "I don't know, I have never tried it."

—F. X. W.

HARNESSING THE TIDES OF FUNDY. Editorial. *St. Paul Pioneer Press.* February 20, 1935.

LETTER. By Chief Justice W. R. Pattangall addressed to Editor, *Bangor Daily News.*

QUODDY DEVELOPMENT. Editorial. *Kennebec Journal.* January 19, 1935.

RISING TIDES. Editorial. *The Washington Post.* February 1, 1935.

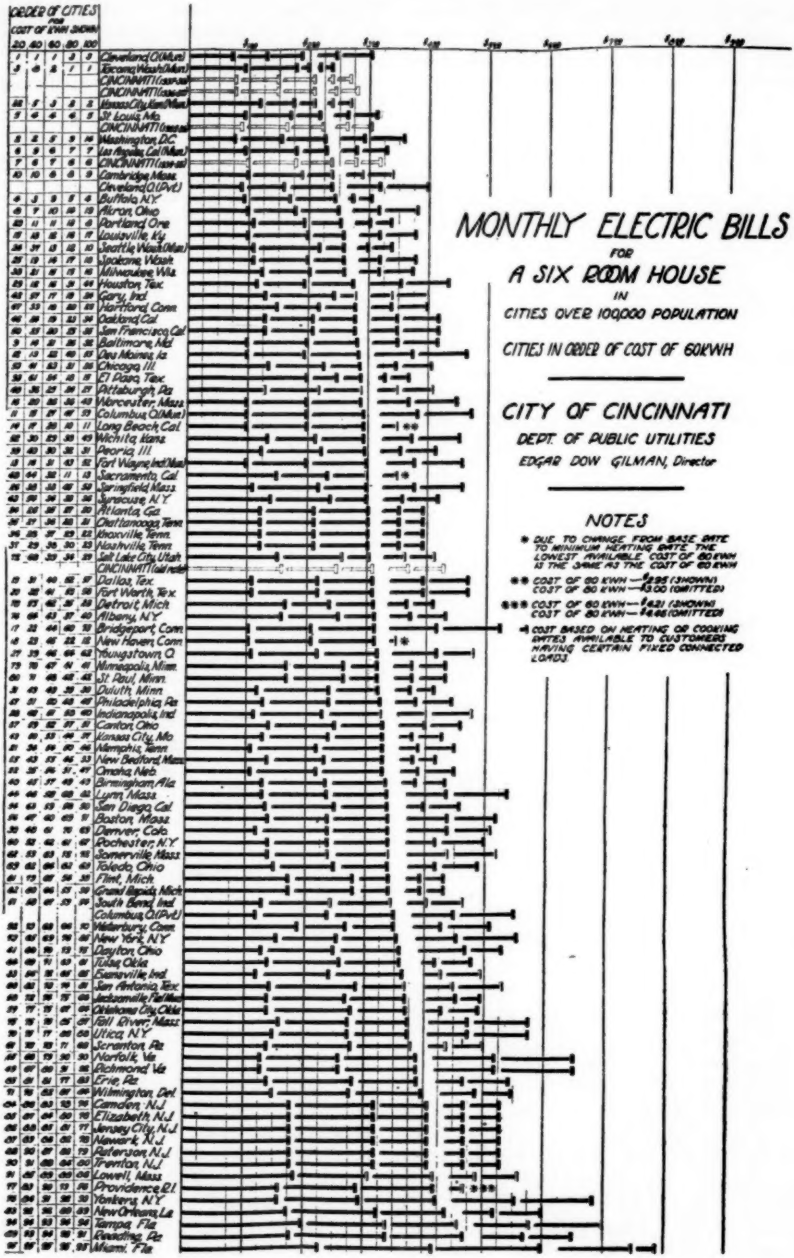
Checking Up on the New Deal Power Policy

EVENLY balanced, dispassionate, and complete discussion of the Federal power program is something of a rarity among the deluge of reports, explanations, arguments, and what-not emanating almost daily from government sources, from public ownership advocates, and from power companies and others who oppose the vast expenditures for hydroelectric projects.

Those who are sincerely interested in the subject and who would like to know something of the history, as well as the present status and future prospects, of the government's great power developments will find much of value in Research Bulletin No. 8, issued for limited distribution by the department of rates and research of the Illinois Commerce Commission. The bulletin was written by Paul J. Raver, chief of the department and a professor at Northwestern University. It is a survey of the aims and purposes of the Federal power program and its possible consequences to public utilities and to state regulation.

A somewhat unusual feature of the bulletin is that the author, writing as he does as a representative of a state commission, seems to assume that commission regulation of utilities has failed. At any rate, he lays considerable stress upon the alleged fact that President Roosevelt's attitude toward utilities is founded upon the conviction, acquired as governor of New York, that state regulation of electric rates was ineffective. Mr. Raver, however, does not particularize, nor does he note that President Roosevelt served as chief executive of New York for two terms without having made any conspicuous effort toward strengthening the state laws in this respect.

Significant changes in the organization and administration by state commissions are suggested as one of the possibilities likely to result if the Federal program follows its indicated


ORDER OF CITIES FOR COST OF KWH SHOWN
MONTHLY ELECTRIC BILLS
FOR
A SIX ROOM HOUSE
IN
CITIES OVER 100,000 POPULATION
CITIES IN ORDER OF COST OF 60 KWH
CITY OF CINCINNATI
DEPT. OF PUBLIC UTILITIES
EDGAR DOW GILMAN, Director
NOTES
* DUE TO CHANGE FROM BASE RATE TO MINIMUM HEATING RATE THE LOWEST AVAILABLE COST OF 80 KWH IS THE SAME AS THE COST OF 60 KWH
** COST OF 60 KWH — $2.95 (SHOWN) COST OF 80 KWH — $3.00 (OMITTED)
*** COST OF 60 KWH — $4.21 (SHOWN) COST OF 80 KWH — $4.46 (OMITTED)
COST BASED ON HEATING OR COOKING RATES AVAILABLE TO CUSTOMERS HAVING CERTAIN FIXED CONNECTED LOADS.

grouping of power properties in regional areas. In this event, Mr. Raver thinks, state control of the electric business would become largely regulation of local distribution systems, the balance of the problem of generation and transmission being left largely to the regional body. This conclusion is all the more striking since the bulletin was written prior to the drafting of the Rayburn-Wheeler bill for Federal regulation of electricity in interstate commerce. The bill apparently aims at the very result suggested by Mr. Raver.

FIVE possible future courses of the Federal program are set down, with the qualification that no one, of course, can state definitely just which of several trends the government will take.

These courses in general would tend toward the eventual elimination of state regulation of electric rates as it now exists.

President Roosevelt's shifting position on the power question is fully noted, with liberal excerpts from his writing and addresses as far back as 1929. Then this comment is made:

> Thus it would seem from the Portland speech and later speeches that the emphasis has been more and more on the power side of the program, with the land reclamation, reforestation, and other broader social problems more and more in the background. This emphasis has centered on the yardstick idea of rate regulation and on the broad social concept of securing wider use of electricity by lower rates. The reasons for this change in emphasis will have to be left to the reader's judgment.

However, in summary it seems to Mr. Raver that the administration has decided that:

> 1. State regulation has failed to bring about an effective regulation of rates for power. This is due partially to the attitude of state commissions and partially to the attitude of the courts. (The President's experience with regulation while governor of New York undoubtedly had much to do with his attitude.)
>
> 2. As a result, the country is not enjoying today that wide dissemination and utilization of power which could be secured if rates were lowered and use greatly stimulated thereby.
>
> 3. The country has available tremendous natural resources, water power, coal, and oil, which, if demand for electricity could be properly stimulated, could and should be utilized for the generation of power.
>
> 4. The government does not intend to sit idly by waiting for the power companies to develop the latent demand for electricity by the same slow processes used in the past. It has power sites of its own (and can finance others—state and municipal) which under Act of Congress in the Wilson administration it is given the power to develop and which it intends to develop.
>
> 5. The development of these sites will be carried out under government ownership, but a Federal power policy is to be worked out by the Federal Power Policy Committee, which will give consideration to both public and private power problems and interests.
>
> 6. The development of these sites at this time is justified as a recovery measure in a national emergency.
>
> 7. The power supplies developed at these sites are really by-products of larger social problems demanding immediate attention, chief among which are reforestation, elimination of soil erosion, flood control, irrigation and land reclamation, and the rehabilitation of families thrown out of industrial and agricultural employment by the depression.

In addition to a full and frank discussion of the administration's aims and plans, the survey includes an outline, with historical background, of the various power projects presently under way and in prospect. Sufficient statistical material is included to make the situation intelligible to the reader.

THE bulletin is rounded out with a bibliography of the Federal power program, a chronological review of the Muscle Shoals legislation from 1824 to 1933, and an explanation of the British grid system.

The Illinois Commerce Commission should be accorded credit for sponsoring this competent research activity of Mr. Raver. This type of independent checking up on the Federal government's program is especially valuable at this particular time, when the unbiased citizen is beginning to suspect the accuracy of some of the laudatory "hand outs" from Washington publicity departments, as well as critical comments thereon from private utility sources. A little more old-fashioned independence would be welcomed elsewhere.

Under this category might also fall the recent electric rate survey of cities of over 100,000 population in the United States, issued by the city of Cincinnati. Coming, as it did, some weeks before the publication of the first section of the Federal Power Commission's national electric rate survey, it is interesting to compare one with the other. In a way, the Cincinnati study supplements the Federal Power Commission's survey, because while the Federal commission selected "typical bill" blocks of 15, 25, 40, 100, 250, and 500 kilowatt-hour consumption per customer, respectively, for purposes of comparing costs of the relative blocks in different cities, the Cincinnati study selects 20, 40, 60, 80, and 100 blocks. Favorable comment on the Cincinnati report has already appeared in these pages (PUBLIC UTILITIES FORTNIGHTLY, January 31, 1935) but we are privileged to reproduce in this issue an exceptionally concise chart published by the city of Cincinnati which has the almost incredible advantage of telling the rate story of every city over 100,000 in the United States for the various blocks of consumption selected, in addition to the relative rank of each city in the matter of low rates for each block classification so considered—all on one page.

—GEORGE E. DOYING

THE FEDERAL POWER PROGRAM. Research Bulletin No. 8. Illinois Commerce Commission, Department of Rates and Research. January, 1935.

"Public Utility Valuation for Purposes of Rate Control"

THIS book by Dr. John Bauer and Mr. Nathaniel Gold is part of a general study on legal valuation now being made under the direction of Dr. James C. Bonbright.

The book is divided into three parts. Part I traces the historical development of the valuation concept; Part II deals with the problems that arise in the determination of the rate base; and Part III presents a general criticism of the valuation process, and offers a constructive plan for dealing with this difficult and controversial subject.

Most readers of PUBLIC UTILITIES FORTNIGHTLY are already familiar with the views of the authors on valuation and with their "plan." As between reproduction cost and actual cost (prudent investment), the authors strongly favor the latter. They point out that a satisfactory rate base must conform to six standards: it must (1) be capable of systematic administration; (2) provide for definite protection of both investors and consumers; (3) maintain the financial stability of the public utilities to the extent possible through rate control; (4) make available new capital as needed; (5) encourage progressive development; and (6) provide rate flexibility, and permit the accumulation of reserves in prosperous years as a protection to the companies against the lean years of depression periods. Though reproduction cost conforms to the fourth and fifth standards, it does not conform to the other four, whereas actual cost conforms to all six standards. The authors therefore unqualifiedly assert that the actual cost (or actual investment) concept best fits in with the requirement of a fixed rate base.

THE authors' "plan" for the establishment of a fixed rate base differentiates between past investments and future investments. As to the former, they propose that legislation be enacted providing for a mandatory revaluation of the existing properties in accordance with the law of the land as interpreted by the Supreme Court of the United States. The "fair value" of the property of every company should be deter-

mined as of the date that the legislation became effective; and the "fair value" as determined should be taken on the books of each company. In rewriting the books the cost "new" would be placed under the appropriate property accounts, and depreciation would be entered under the appropriate reserve account; and there would thus be a complete accounting set-up for the initial valuation. The initial rate base would, of course, be the sum of the property accounts less the amount of the reserve for depreciation. Under this plan the fair value as taken on the books (the initial rate base) would never be modified as the result of a revaluation.

As to future investments, the actual cost concept would be strictly followed: When new properties are constructed or installed, their cost would be added to the appropriate property accounts, leading, of course, to an increase in the rate base. On all depreciable property depreciation would be regularly computed; and the amount thereof charged to operating expenses and added to the depreciation reserve. As units of property are retired, the amounts at which they are carried on the books would be deducted from the property accounts and from the depreciation reserve. Through the use of this systematic procedure, it would be possible to ascertain at any time the amount of the rate base; the accounts would make the facts readily available.

In the concluding chapter the authors (one of whom is an attorney) discuss the constitutionality of their proposal. They believe that if the proposed plan were embodied in a legislative enactment it would be sustained by the Supreme Court of the United States. They point out that the court, in its past decisions on the subject of valuation, has naturally been influenced by the fact that the valuation statutes established various bases of valuation, and it has never been confronted with a clear legislative policy carefully devised to correct the administrative defects of the present valuation process. They cite Los Angeles Gas & E. Corp. *v.* California R. Commission (1933) 289 U. S. 287, 304, P.U.R.1933C, 229, 240, where the court said:

> The legislative discretion employed in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed.

The authors assert that their plan does not reduce, abridge, or destroy any private rights; it merely proposes the substitution of exact rights for inexact ones. Cannot an uncertain, variable vested right be converted, they ask, into a definite and nonvariable right for the future? Is "due process" violated by the establishment of clarity and purpose? Assuredly the Constitution is sufficiently flexible to make possible a change in the law for the better protection of public and private interests.

The book makes it clear that the unreasonable attitude of the public utilities on the subject of valuation is one reason for their present unpopularity. Something has to be done to improve the valuation process; if it is not, the people will turn increasingly to competitive public undertakings. Whether or not the authors are correct in their views as to the constitutionality of their plan, the plan itself is sound, and their recommendations as to legislative action should be followed. Their treatment of this controversial subject is to be commended for its temperate character. To be sure, there is much repetition and admittedly little that is new; but the authors command admiration because of the zeal and persistence with which they seek to improve the regulatory process at a vital point.

—Eliot Jones.

Public Utility Valuation for Purposes of Rate Control. By John Bauer and Nathaniel Gold. New York: Macmillan. 1934. 477 pages. $3.50.

The March of Events

Public Ownership Conference Considers Many Problems

With leaders of public ownership enterprises from coast to coast and from Florida to neighboring provinces in Canada participating, the Ninth Biennial Conference of the Public Ownership League of America was held in Washington, D. C., February 21-25, inclusive. The program, in charge of Dr. Carl D. Thompson, secretary of the league, resulted in what was regarded as the most successful of the league's many conferences during the twenty years of its existence. Dr. Thompson, in a radio address over the National Broadcasting System, outlined the conference program and explained the objective of the league and its purpose to promote the general welfare throughout public service, and invited the public to attend the sessions.

Conducted in coöperation with the National Municipal Utilities Association, the People's Lobby, and other affiliated organizations, the 5-day meeting devoted itself to such vital problems as the following: reëmploying and reëstablishing the purchasing power of the idle millions without increasing taxation or the public debt; restoring agricultural markets; finding new sources of revenue for the thousand financially distressed municipalities; recasting our money, banking, and credit system to meet present-day needs.

Considerable attention was given by delegates and others attending the sessions to accounts by managers of municipal utilities operating in Los Angeles, Seattle, New York, Springfield (Ill.), Kansas City (Mo.), Jamestown (N. Y.), Jacksonville (Fla.), and in other cities. Federal power developments such as Muscle Shoals, Boulder Canyon, and others also were described.

In his president's address, Willis J. Spaulding, commissioner of public property of Springfield (Ill.) spoke of the rapid development sure to come in the electrical field and cited the remarkable increase of the use of current as rates were reduced. President Spaulding advocated the coöperation of the Federal government in subsidizing rural electrification.

National recovery by the operation of "natural forces" or by expedients that leave unchanged the fundamental features of the existing economic system was held no longer tenable by Dr. Henry Pratt Fairchild, professor of sociology, New York University. The strife for competitive monetary profits, Dr. Fairchild contended, involves a continuous struggle for the impossible and inevitably leads to innumerable destructive practices.

President Roosevelt was nominated for a new position when he leaves the White House by Bruce Bliven, editor of *The New Republic*, who proposed a nationally owned and operated radio broadcasting system, excluding advertising and operated in competition with private companies. Mr. Bliven declared the ideal manager for such a system would be President Roosevelt, and that in his opinion the position would be one of such public importance that he thought Mr. Roosevelt would be glad to accept it.

Public ownership of radio broadcasting also was discussed by Ernest E. Anders, commissioner of public utilities of Jacksonville. The Florida metropolis is one of the few cities in this country that own and operate a broadcasting station. Other unique features of municipal ownership in Jacksonville, according to Mr. Anders, are a precooling plant, through which passes about 25 per cent of Florida's citrous crops sent to Northern markets, and a cotton compress, both of which are operated in connection with the city's docks and terminals. In referring to the city's $10,000,000 electric light plant, Mr. Anders pointed out that although the charge for residential consumption for 100 kilowatt hours is higher than that of any other city in the United States, the actual average cost in Jacksonville is only 1.24 cents per kilowatt hour, which, according to Mr. Anders, is less than 50 per cent of the average cost throughout the country.

The completely electrified home, including an electric heating system, which requires only 10 kilowatts of the total connected load of 25 kilowatts, is served by the Springfield (Ill.) municipal light and power plant, according to Samuel J. Sibley, who addressed a third-day session. J. D. Ross, superintendent of the municipal light and power system, Seattle, Washington, declared that the part of the New Deal's electric power yardsticks represented by Seattle power plants is only four or five inches long. The remaining 32 or 31 inches, Mr. Ross said, is the price the customer must pay to have the current transmitted to his home. In advocating municipal ownership, Mr. Ross declared that "state regulation has miserably failed. You cannot regulate by remote control."

Stating that public ownership is one of the biggest issues facing the people today, and that the St. Lawrence project is the outstanding power issue, Frank P. Walsh, chairman, New York State Power Authority,

told the conference of the efforts being made to obtain St. Lawrence power for municipalities in that state. He also declared that the proposed adoption of the Washington rate plan in New York could not succeed without the force of potential public competition.

The campaign being waged in Quebec by the Union of Municipalities to provide control of private utility companies by real competition of state and municipalities was described by the Union's secretary, T. D. Bouchard, Speaker of the Representative Assembly of the Province of Quebec.

James D. Donovan, superintendent of the municipal light and power plant of Kansas city and president of the Kansas Municipal Utilities Association, said the most serious problem confronting cities desiring utility ownership is the delay encountered by the use of court injunctions and the long-drawn-out legal proceedings following them. As many of these cases have resulted from the PWA program, the Federal government, in Mr. Donovan's opinion, could well afford to supply the legal talent necessary to represent properly the municipalities' side of the cases. Mr. Donovan favored the establishment of numerous municipal plants rather than a few large Federal projects.

Asserting that the construction and operation of the Knoxville distribution system will provide a "yardstick" for measuring the actual cost of distribution systems without inflated valuation, R. E. McDonnell, consulting engineer of Kansas City, Mo., said that the Knoxville system will prove beyond a doubt that the policy of low rates with consequent increased consumption may be attained by any city.

Speaking for the International Brotherhood of Electrical Workers, M. H. Hedges, director of research, urged the conference to consider the needs and advantages of organization of labor in municipal and public projects.

The largest municipal project on the continent—the watering system of New York city—which serves 7,000,000 people and represents an investment of $501,600,000 was described by Maurice P. Davidson, commissioner of water, gas, and electricity of the city of New York.

Congressman William Lemke, (R) North Dakota, explained the bill proposing a Bank of the United States. The bill is along the lines of that Representative Lemke sponsored, creating the Bank of North Dakota, the operation of which was discussed at the conference by Alfred S. Dale, former state treasurer.

A resolution passed by the conference urged a Federal department of municipalities. Another resolution committed the league to support of the policy of public ownership of the telephone system, preferably through ownership by the Federal government. If that proves unfeasible, the resolution provided, the league will support Federal financing to aid municipalities in establishing their own systems.

The conference February 23rd adopted a resolution favoring Federal ownership and control of all hydroelectric projects and their facilities for delivering power in interstate commerce.

L. J. Scheer, assistant to the president of the Detroit, Mich., city council, made a plea for public ownership of all public utilities. He told of the progress in the plan to pipe natural gas from the Texas oil fields to the population centers of the Middle West through pipe lines built with PWA funds. He said Secretary Ickes, PWA Administrator, and James V. Allred, governor of Texas, had practically come to an agreement on the pipe-line construction. The project involves the expenditure of approximately $50,000,000. Scheer said the greatest monopoly in the country exists in the gas industry.

Move to Halt Fight on TVA

IDENTICAL measures "designed to stop harassment of the Tennessee Valley Authority by the power trust" were introduced in the Senate and House February 28th by Senator Norris, (R) Nebraska, and Representative Rankin, (D.) Mississippi, according to the *Philadelphia Record.*

The bills are backed by the administration. They would exact stiff bonds from corporations or individuals enjoining TVA from selling or consumers from purchasing its cheap power.

Utility Measures Valid

THE Federal 3 per cent tax on electricity sales and the Johnson measure defining jurisdiction of district courts in utility rate cases are constitutional in the opinions of Newton D. Baker and James M. Geck prepared for Thomas N. McCarter, president of Edison Electric Institute.

The opinion on the tax matter was sent to Mr. McCarter January 11th, and on the Johnson bill November 22, 1934, but was released for publication for the first time March 4th by the Edison Electric Institute, according to *The Wall Street Journal.*

A. T. & T. Probe Bill Passes

TELEPHONE and telegraph companies came in for major attention in the capital recently when the House passed a Senate resolution for investigation of the American Telephone and Telegraph Company and the Federal Communications Commission began hearings on telegraph rates, according to *The Washington* (D. C.) *Post.*

The A. T. & T. resolution, sponsored by

Senator Burton K. Wheeler, (D.) of Montana, and carrying $750,000 for the inquiry, needed only the signature of President Roosevelt to become effective. It embraces all telephone companies but is directed chiefly at the vast communications system of the A. T. & T.

The House passed the resolution under suspension of rules, which required a two-thirds majority.

Arkansas

Reorganized Commission

A BILL which would create a department of public utilities headed by three commissioners to be appointed by the governor and confirmed by the senate, with power to investigate rate structures of all public utilities and to fix and enforce rates in accordance with its findings, was passed by a senate vote of 28 to 6.

Before its passage, a proposed amendment to the bill to reduce the salaries of members of the proposed utility commission from $5,000 to $3,600 a year was voted down. The amendment was offered in view of the fact that the new commissioners would receive larger salaries than members of the corporation commission; the proposed department of public utilities will be a division of that commission.

California

Utility Accepts Rate Slash

THE San Diego Consolidated Gas and Electric Company has formally accepted the slash in rates decreed February 4th by the railroad commission, according to the *Los Angeles Times*.

The reduction to home consumers is about 10 per cent and for commercial consumers 12 per cent, allowing the company 6¾ per cent interest on its investment.

Vote on Utility Questions

VOTERS of Lindsay, Porterville, Tulare, and Corcoran probably will cast their ballots May 10th on the proposed formation of the Central Counties Utilities District to supply residents of the four cities with natural gas under municipal operation.

The $7,000,000 gas franchise proposal for Los Angeles will go on the April 2nd ballot as Amendment 1-A.

Connecticut

Proposes a "Valley Authority"

STATE and national coöperation toward the development and improvement of the Connecticut valley was one of the recommendations laid before a conference of New England congressmen and governors recently by Governor Curley of Massachusetts, according to *The Hartford Courant*.

Called primarily for the purpose of considering methods for saving the New England textile industry, the assembly discussed several projects which might be carried on in the region under the pending Federal works program. One of the undertakings so listed was a rounded development of the Connecticut valley at an estimated cost of $60,000,000.

Representative Citron, author of a bill which would create a Connecticut Valley Authority, disagreed with Governor Curley on the question of power. The governor told correspondents that "we have all the potential power we need" and expressed the belief the Connecticut valley program should not concern itself greatly with further power development and distribution. Later Mr. Citron took a contrary attitude, holding that cheaper power is of vital importance to the textile industry and that certainly any planned preservation of that industry should look toward lowering electricity costs."

Carriers Favor Regulation

PASSAGE of a bill that would give the public utilities commission, which already regulates railroad, trolley, and bus rates and routes, the authority to license motor truckers recently was urged by railroad and motor

truck interests, which, according to *The Hartford Courant*, have been antagonists for years on the subject of regulation of motor truck carriers. The bill provides that common carriers, following regular routes, would have to file rates. Contract carriers would be free to operate where they chose and would not be required to file rates.

Florida

Rates Lowered for Trial

LOWER gas rates, which will reflect a saving to consumers of $6,500 per month, according to city estimates, were made effective today by the Miami Gas Company for a trial period of six months, under an agreement reached recently with the Miami city commission, according to the *Miami Daily News*.

Illinois

Power Rates Reduced

CUSTOMERS in 52 cities and villages furnished electricity by the Central Illinois Public Service Company will have a substantial reduction in rates beginning April 1st, saving approximately $200,000 a year, the commerce commission announced recently.

A citation was also issued by the commission ordering the Central Illinois Light Company to show cause why its rates should not be further reduced in Springfield, De Kalb, Peoria, Sycamore, Pekin, and several other cities.

Indiana

Gas Rates Reduced

A REDUCTION in gas rates effective February 26th was announced by Mayor William Dentlinger of Connersville, following a conference with officials of the People's Service Company. All patrons consuming more than 1,000 cubic feet of gas a month will receive a cut.

The schedule is: First 1,000 cubic feet, 15 cents a hundred; next 1,5000 cubic feet, 14 cents a hundred; next 3,000 cubic feet, 9 cents a hundred; all over 5,500 cubic feet, 8½ cents a hundred.

Under the old rates two optional schedules were offered, one at 15 cents a hundred cubic feet for all gas consumed; and the other at 20 cents a hundred for the first 500 cubic feet; 15 cents a hundred for the next 2,500 cubic feet; 11½ cents a hundred for the next 3,000 cubic feet; and 8½ cents for all over 6,000 cubic feet.

Kansas

Electric Utility Cuts Rates

ABILENE, Junction City, Manhattan, and Salina will have cheaper lighting rates if the Kansas State Corporation Commission grants the request for a new schedule filed by the United Power and Light Company, according to the *Topeka State Journal*.

The proposed rate schedule for residential and commercial lighting in the four Kansas towns reduces by one-half cent each kilowatt hour in the first step. This means a reduction for residents of 12½ cents a month on the first section of the rate for 25 kilowatts. In the commercial lighting rate the first step is variable according to the load demand.

The United Power and Light Company has announced that its "residential service rate" would be made applicable to power consumers in the towns of Hutchinson, Inman, Little River, Lyons, Medora, Nickerson, and Sylvia.

Kentucky

Water Rates Increased

A NEW water rate schedule, calling for a 60 per cent increase for the average consumer and an increase from 50 cents to $1 in the minimum charge, recently became effective in Lexington, according to *The Courier-Journal.* The Lexington Water Company, however, was placed under $60,000 bond to make refunds to consumers if lower rates should be set by the utility commission.

The city of Lexington filed a formal complaint with the commission atacking the rates as "unjust, unreasonable, and discriminatory," after the water company had filed the new tariff.

Massachusetts

Agree on Electric Rate Cuts

PRELIMINARY report of Governor Curley's committee on electric rates indicates that the private electric utilities companies in the commonwealth have agreed to make cuts in rates aggregating $2,025,100 a year, according to *The Wall Street Journal.* This agreement is participated in by all except three or four small companies serving less than 2 per cent of the electric customers in the state, but the agreement is subject to final approval by boards of directors of the respective companies and state authorities. Rate reductions are to be effective not later than April 1, 1935.

The governor predicted at the conference that the sliding scale plan for automatic rate adjustments will be in operation in Massachusetts within the current year.

A reduction in electric rates for customers of the Cambridge Electric Light Company was announced recently in a new rate schedule sent to the state department of public utilities for approval. The new rates will be effective with readings of meters subsequent to April 1st, according to an item in *The Boston Post.*

The Worcester Electric Light Company also has announced reduced rates for domestic users which will aggregate a saving of $75,000 annually for customers, according to *The Providence Journal.* The new rates will take effect April 1st.

Free Bulb Bill Passes House

BY a margin of two votes the house recently passed to be engrossed a bill which would require electric companies to supply their customers with free light bulbs, according to *The Boston Post.*

Michigan

Propose State Water System

A STATE-BUILT and operated pure water system to supply the needs of Michigan for 100 years is proposed by the state planning commission. It would be self-liquidating over a 30-year period and would be completed at an estimated cost of $200,000,000.

The commission has given priority to a request for $100,000 of Federal public works funds so that preliminary surveys can be completed within eighteen months.

The plan was submitted to the commission by its pure water survey committee after Saginaw valley and other localities had presented water pollution problems.

Missouri

Considers Natural Gas Supply

THE public service commission recently called a hearing for March 25th for the purpose of ascertaining the feasibility of securing a supply of straight natural gas for general industrial and domestic consumption in the city of St. Louis and St. Louis county, according to an item in the *St. Louis Globe Democrat.*

Tentative figures worked out by the commission indicate that if there is an adequate supply of natural gas obtainable for the city of St. Louis, its introduction would warrant a reduction of rates of approximately $1,000,000 annually.

Nebraska

Propose One-man Commission

A BILL drawn by Railway Commissioner Bollen would reduce the membership of the commission from three to one, and require the one to have the qualifications of a supreme judge and to draw the same salary, $5,200 a year, according to the *Nebraska State Journal.* This means the lone commissioner would have to be a lawyer. Commissioner Bollen said that one man can handle all the work of the commission, and that man should be a lawyer skilled in practice and knowledge of law. Commissioner Drake disagreed, saying that the history of the interstate commission and state commission shows that lawyers made the poorest members, although he himself is a lawyer.

New Hampshire

Electric Rate Cut Authorized

THE most sweeping electricity rate reduction ever made by a public utility in this state will become effective March 15th, officials of the public service company of New Hampshire announced recently.

Annual savings of $344,000 will be made by 53,000 domestic and commercial customers in 100 cities and towns, the company estimated. The new rates were authorized by the public service commission on petition by the company in two orders issued February 24th. The reductions follow a series of conferences between officials of the company and the commission.

In addition to reducing its rates the company announced it would eliminate a charge of 5 per cent for bills not paid within ten days.

The company will also eliminate a 5 per cent charge for gas bills not paid in ten days, bringing a saving of $3,700 to consumers, officials reported.

New Jersey

Electric Company Cuts Rates

EFFECTIVE April 17th the Atlantic City Electric Company's rates will be reduced to save customers $545,000 a year, the public utility commission announced recently, according to the *Associated Press.*

The company previously planned to make the reductions effective gradually over a 12-month period, but the commission said "negotiations" between Mayor Harry Bacharach, of Atlantic City, president of the board, and officials of the concern resulted in the plan being made entirely effective April 1st.

The company's action came a few days prior to announcement by the state utilities commission that it will act promptly to secure temporary utility rate reduction under authority recently delegated to the commission by legislative enactment.

Block Camden PWA Loan

THE assembly recently rejected a measure designed to permit municipalities to borrow money from the Federal government to build publicly owned power plants, according to the *Philadelphia Record.* The vote was 33 to 22.

This action virtually killed the hope of the city of Camden for enabling legislation to borrow $6,000,000 from the Federal government to construct a municipal plant. The government has refused to loan the money unless the state passes enabling legislation.

New York

Utilities Offer Rate Cuts

TWO utility companies serving Westchester consumers have petitioned the public service commission for permission to reduce voluntarily electric rates, according to *The New York Times.* The new schedule would save general consumers $1,009,000 a year and municipalities $132,000.

The companies are the Westchester Lighting Company and the Yonkers Electric Light and Power Company. The new schedules include promotional or so-called "objective rate" features.

Ohio

Rescind Gas Ordinance

SCHEDULED hearing of the Ohio Fuel Gas Company's appeal against a 48-cent rate ordinance before the public utility commission March 6th was forestalled by action of city council in repealing the ordinance, according to the *Columbus Evening Dispatch.*

Council's action followed a report from its own engineers, Burns & McDonnell Engineering Company, which failed to sustain the ordinance, and on the contrary held that the gas company on the basis of 1933 business was entitled to an average 78 cents per thousand cubic feet rate. The company is collecting a rate that averages 73 cents.

Rhode Island

Green Seeks Rate Cut

REDUCTION of the rates for power and light charged by the Narragansett Electric Company, subsidiary of the New England Power Association, is being sought by Governor Theodore Francis Green, who recently discussed the matter, and Frank D. Comerford, chairman of the board of the power association, according to *The Providence Journal.*

The Blackstone Valley Gas & Electric Company recently announced proposed rate reductions in Pawtucket, Central Falls, and other communities estimated at $192,999 annually.

A bill has been introduced in the general assembly for municipal operation of the utilities in the town of West Warwick.

Texas

Urges Conservation of Gas

ASSERTING that sound public policy demands that the atrocious waste of natural gas be stopped and that our gas resources be conserved for useful purposes, Governor James V. Allred, according to *The Daily Oklahoman,* recently appeared personally before the legislature and recommended:

1. Legislation to effectuate gas conservation and elimination of physical waste within reasonable limitations to protect oil production.
2. Ratable withdrawal from all gas wells.
3. Limitations upon the right to produce natural gas from gas wells to compel producers, handlers, or transporters of natural gas to appropriation withdrawals from all gas wells in each field ratably under supervision of the railroad commission.
4. Investiture of the railroad commission with power to restrict production to prevent physical waste and to restrict the right to produce natural gas so as to impose ratable withdrawal of gas from the wells in each field.
5. To permit use of gas for any "beneficial" purpose.
6. Divorcement of gas pipe lines from producing, manufacturing, and marketing branches of the natural gas industry.

The governor said he regarded pipe-line divorcement as "essential to the remedy." He said small producers, denied a market outlet by pipe lines, "have been compelled to turn to the wasteful practice of stripping the natural gasoline for profit and turning the stripped gas into the open air. These pipe lines, selfishly refusing to purchase gas ratably, have left small independent producers with no outlet."

"The gigantic waste of natural gas in Texas," the governor declared, "has atttracted the attention of the state and nation. This waste must be stopped."

Supports Utility Bill

BACKED by strong support, the administration's bill to bring all public utilities under strict state supervision won its way to the house floor recently on a favorable report of the municipal and private corporations committee, 13 to 0, with two present and not voting, according to *The Austin American.*

The bill, embodying Governor James V. Allred's ideas on public utility regulation, withstood all attempts at amendment except those acceptable to its sponsors. It was drafted by Dr. R. H. Montgomery.

It would establish a 3-member commission to be paid $8,000 annually to have original jurisdiction over rates charged in all cities, including those operating under home-rule charters.

The senate state affairs committee recently approved a house bill to prevent public utilities from arbitrarily reducing rates to

freeze out competition. A committee amendment would authorize utilities to reduce rates, however, to those charged by a competing company.

Gas Rate Reduction Approved

THE railroad commission recently awarded domestic gas users of Wichita Falls a $130,000 refund, and a saving of $40,000 a year in gas rates, if the courts sustain its order, according to *The Austin American.*

The commission approved a reduction of the domestic gas rate in Wichita Falls from 67½ cents to 61 cents, retaining a minimum $1 per month bill which includes a 50-cent ready-to-serve charge. A penalty of 10 per cent is allowed on bills unpaid over ten days.

A new order is effective from March 1st. But refunds, under a $360,000 bond posted by the company, will date from October 1, 1931, when the city enacted an ordinance reducing the rate. This refund will amount to $130,000, and will be paid over to the city for the benefit of the consumers.

Washington

Vote on Power Plan Assured

AN amendment to the Constitution authorizing the state to engage in the power business will be submitted to the voters at the general election next year as a result of the recent action of the house in concurring in senate changes to H. J. R. No. 10, to permit rural retail electrification, according to an item in *The Seattle Daily Times.* The revised resolution repassed the lower chamber 82 to 16.

Wisconsin

City Claims Utility Status

MILWAUKEE city recently sought to convince the public service commission, in its hearing on the city's proposal to build a $14,800,000 electric plant, that the city was a public utility prior to 1907, according to *The Wisconsin State Journal.*

On this point hinges the city's main contention that it does not have to demonstrate to the commission that public convenience and necessity require it to build an electric plant before the commission can authorize it to do so. It was contended that the city had established itself as a public utility in 1906 before the legislature enacted the law requiring municipalities to make a showing of convenience and necessity to acquire a privately owned plant or enter into competition with it.

The city now is merely applying for authority to add to its utility facilities as required by law in all cases where the addition is expected to cost more than $10,000, it was pointed out.

Rate Cuts Exceed $129,000

UTILITY rate reductions of $129,902, affecting 36,727 customers, were ordered or authorized by the public service commission during January, the commission recently announced.

In the transportation, securities, water-power, and utilities fields the commission held 325 hearings during January, opened 392 cases, and closed 245.

Pending on February 1st were 818 cases, of which 15 were securities, 22 water power, 29 railroad, 68 utility, and 684 motor transportation.

Municipal Plants Taxed

THE senate recently passed unanimously Governor LaFollette's $5,000,000 emergency relief bill amended to include municipally owned utilities in the section taxing telephone, gas, and water companies up to 3 per cent of their gross revenues.

Municipal utilities are the subject of other utility measures before the 1935 legislature.

Liberalized municipal competition with privately owned utilities and a proposal to make all state public service commission rate orders retroactive to thirty days after the rate investigation was started are the major proposals.

Bills specifically concerned with municipal utilities would make definite statutory provision that they shall earn on the value of the property a fair return equal to that allowed private utilities, would exempt their additions to plant from the requirement of public service commission approval, and would again make delinquent bills of municipal electric utilities collectible on the tax bills of customers or their landlords.

The Latest Utility Rulings

Johnson Act Withdrawing Rate Cases from Jurisdiction of Federal Court Is Upheld

THE validity of the act of May 14, 1934, known as the Johnson Act, withdrawing from Federal district courts jurisdiction over intrastate utility rate cases, has been sustained by the District Court for the Southern District of Mississippi. The decision resulted from an attack upon a municipal rate ordinance.

The court first disposed of a direct attack upon the constitutionality of the Johnson Act by holding that the Constitution establishes the Supreme Court, but, by placing the duty upon Congress to create inferior Federal courts and distribute their jurisdiction, it conferred power upon Congress to confer or contract such jurisdiction in the exercise of Congressional discretion.

Jurisdiction of the District Court was alleged both on the ground of diversity of citizenship and of repugnancy to the Federal Constitution. It was argued that Congress intended to withdraw jurisdiction only in those cases where there was present a single and separate ground, and that where both grounds were relied on the jurisdiction was not taken away, since the disjunctive "or" was used instead of the conjunction "and" or the hybrid "and/or." This argument was declared to be specious but unsound, since it proceeded upon the premise that the jurisdictional grounds were joint when they were several and distinct.

The court held that a sufficient notice and hearing had been given to the utility company since it had been notified to show cause before the municipal governing body and had been requested to submit facts and arguments. It was also decided that the chancery courts of Mississippi had sufficient jurisdiction to provide a plain, speedy, and efficient remedy in the state courts.

The Declaratory Judgments Act of June 14, 1934, § 274 of Judicial Code, was held to confer upon Federal courts only the power to declare rights and other legal relations of interested parties in cases of actual controversy over which the court otherwise had jurisdiction, and, therefore, this act did not extend the general jurisdiction as limited by the Johnson Act. ***Mississippi Power & Light Co. v. City of Jackson et al.***

Legality of Public Utility Operations by the Federal Government in the States

TWO important questions are involved in the decision by District Judge W. I. Grubb holding illegal the operations of the Tennessee Valley Authority, and it is likely that they will be finally answered by the Supreme Court of the United States. Counsel for the Tennessee Valley Authority have declared that the case would be immediately appealed.

Judge Grubb has restrained the Alabama Power Company from transferring Alabama properties to the Tennessee Valley Authority on the ground that the contract for such sale is in furtherance of illegal proprietary operations of the Federal Authority.

He has enjoined the Alabama Power Company from operating as an agency for the Electric Home and Farm Au-

thority, Inc., a subsidiary of the Tennessee Valley Authority through which cheap electrical appliances are sold on long-term contracts.

He has prohibited fourteen Alabama towns and cities receiving current from the Alabama Power Company from entering into or performing any contract with the Tennessee Valley Authority for the purchase of electric energy, either directly or indirectly. This injunction also prohibits the borrowing of funds from any Federal agency to build a distribution system to obtain Tennessee Valley Authority current.

The questions presented are (1) whether a Federal instrumentality like the Tennessee Valley Authority can legally operate a public utility business as an end and not as an incident to the usual governmental functions, and (2) whether such operation in the Tennessee valley is a fact.

The decision by Judge Grubb is that under the Tenth Amendment of the Federal Constitution, or regardless, the government of the United States would have no right within the limits of a state to conduct any private proprietary business unless it did so in a way that was tied to some express or implied constitutional grant of power. If tied to such a grant of power, then the power would carry with it the proprietary business and the right to operate it on the part of the government in the state.

He concluded, however, that the evidence showed that there was no substantial relation between the power created and disposed of and intended to be disposed of under the plan of the Tennessee Valley Authority and a surplus that is merely over it, what is needed to carry the government operation on physically. Judge Grubb said:

> On the other hand, if it cannot be attributed to any one of those powers, then, as I see it, the Tennessee Valley Authority would be in the attitude of conducting for the government, since it is a governmental instrumentality, a completely owned subsidiary of the government, doing business in the state of Alabama, in a proprietary way, and without any power to attach that business to; and in that case it seems to me it would be an unauthorized *ultra vires* business and therefore could not continue to be conducted legally.

The announced purpose of these operations has been the creation of a governmental "yardstick" with which to gauge operations by public utility companies. The Supreme Court will be asked to decide whether this purpose is in aid of navigation, flood control, or other matters confided to the Federal government by the Constitution. *Ashwander, et al. v. Tennessee Valley Authority, et al.*

State Commission Can Fix Depreciation Rates until Federal Body Acts

THE supreme court of Nebraska has sustained an order of the railway commission directing the Northwestern Bell Telephone Company to set up on its books a depreciation charge based on all depreciable property for the year 1934 amounting to 3.5 per cent. The company had contended for a rate of 4.48 per cent.

The court was of the opinion that until the Federal commission fixes the rate of depreciation upon local Class A telephone company property for intrastate purposes, the state commission has jurisdiction and authority to prescribe such rates.

The company complained that it had not been given a full hearing because the commission merely called in officers and employees and questioned them. The court, however, held that an opportunity to defend had been given the company and the company had been afforded due process of law under the Federal and state Constitutions. It was pointed out that the record showed the case was submitted on the evidence adduced without any objections of any

sort until after the decision. In such a case, it was ruled, the court ought not to reverse the action on the ground that after the judgment is entered a party can then claim it was taken by surprise. *Northwestern Bell Telephone Co. v. Nebraska State Railway Commission.*

Commission Rules on Depreciation Accruals of Transit Company

THE public utilities commission of the District of Columbia has rejected proposed depreciation rates submitted by the Capital Transit Company with the statement that these proposals would produce a greater annual accrual of depreciation than the temporary rates in effect and would result in duplications and over-accruals. The company had proposed the following depreciation percentages:

	Per cent
Track and line	3.57
Transmission and distribution	2.86
Buildings and structures	2.00
Power and substation equipment	2.50
Cars	3.33
Busses	10.00
Miscellaneous equipment	8.00

Depreciation charges, it was held, should be set up in the accounts for each class of property rather than for the property as a whole. The commission included in its order a list of the classes of depreciable property for which rates and data were to be filed. It was said in part:

> It is important to the ratepayer that only proper and legal amounts be charged to operating accounts for depreciation accruals. A determination of proper rates applicable to the depreciable property of the Capital Transit Company requires a study of the depreciation reserves, the history, and all other pertinent facts of that company and of its predecessors, and it is essential that the true facts relating to the depreciable property as a whole and by classes be known. Among the factors to be considered are original cost; date when the units of property were first put in service; their estimated service lives; the change or changes in such estimated service lives; the prior rate or rates of accruals and changes therein; the aggregate amount of accrual; years and dates each of the units of property was in service without accrual; gross and net estimates of salvage value; and estimates of remaining service lives.

Re Capital Tranist Co. (P. U. C. No. 3082, Order No. 1309).

Motor Carriers May Establish Through Routes and Joint Rates

THE Maine commission is of the opinion that the establishment of through routes and joint rates by common carriers operating over the highways would be in the public interest and should be permitted under appropriate procedure if authorized by the state law, provided at all times the public interest is protected and the rights of authorized common carriers are properly guarded.

The commission has announced that it would recognize the right of common carriers to establish through routes and to participate in joint rates in view of a conclusion and opinion of the deputy attorney general that such action is legal under the Maine statutes. While Chap. 259, Public Laws of 1933, relating to motor carriers does not specifically authorize the establishment of through routes and joint rates, on the other hand such establishment is not directly prohibited. Moreover, certain provisions of this law makes reference to the statutes governing railroads and provide that holders of certificates are subject to such laws, which provide for through routes and joint rates. *Re Consolidated Class Rate Tariff (XT-6).*

Colorado Commission Curbs Competition by Private Carriers

The Colorado commission, although formerly taking the position that the issuance of private permits for motor vehicle transportation was mandatory, has recently expressed the opinion that the law does not require it to issue any and all private carrier permits regardless of the effect such issuance may have upon the public welfare and interest.

Pursuant to this policy authority to operate intrastate as a private carrier has been denied to an applicant where no new business could be developed in the territory sought to be served and the freight carried by the applicant must be taken away from competing common carriers with further resulting impairment of their already impaired ability to serve the public in the manner imposed upon them by law. The commission said:

> These common carriers are all public utilities, and as such, have dedicated and devoted their property to public use. The public has an interest in the continued service of common carrier transportation agencies, and likewise, the common carriers have a legal duty and obligation to render efficient and adequate service to the public at reasonable rates until given authority to quit. Every private carrier who operates on the highways has taken all or part of his freight from some common carrier, and as each new private carrier commences operation, it simply means that a certain amount of traffic is diverted from a common carrier. The private carrier has not dedicated his property to public use and can quit at any time without first obtaining authority from anyone. These continued encroachments by private carriers have driven the rates below the point where our common carriers can long continue to serve, and we are fast approaching a situation which, if not remedied, will ultimately result in much higher rates to the public without a guaranty of dependable service. No public utility can be compelled to serve at a loss, and the commission's duty to the carriers and to the public is to remedy the situation if possible.

Re Borck (Application No. 2240–PP, Decision No. 6305).

Transfer from Depreciation Reserve to Surplus Held Unjustified

An application by the Edison Light and Power Company for approval of the transfer of $650,500 of its reserve for renewals and replacements to its unappropriated surplus account has been disapproved by the Pennsylvania commission, where no historical analyses were submitted to show in detail the actual investment in the property and the circumstances which led to the creation of the existing reserve, but instead the applicant had relied upon a study of its plant account, fiscal value, and renewals and replacements reserve.

The proposal was to make the transfer to surplus account, declare a 50 per cent dividend amounting to $650,500, and to pay the dividend to a parent street railway company by means of a 6 per cent demand promissory note. The railway company proposed to appropriate a like amount from its surplus to its reserve for renewals and replacements, which was alleged to be insufficient because of the abandonment of certain of its street lines during the past two years.

The commission said that it was clear that depreciation accounting based on the service life of property is required by the uniform classification of accounts, and for the commission to approve the transfer of any sum from the reserve on the observed condition based upon estimated cost of reproduction new of the property, without giving detailed consideration to the expected service life and age of the various units of property and the actual investment therein, would be in contravention of the existing order of the commission prescribing the uniform classification of

accounts. The commission stated concerning the intercorporate relationship:

> Furthermore, it is stated in the record that the only purpose of the transfer is to take care of the abandonment of the property of the railway company, and that if the railway company were not faced with the need of a larger depreciation reserve for retirement of railway property, applicant would not seek commission approval of the diversion from its reserve for renewals and replacements. It is therefore evident that the applicant is not interested primarily in the adjustment of its reserve to conform with the principles outlined in the uniform classification of accounts, but because of the insufficiency of the railway company's reserve and the financial condition of that company, permission is sought for the transfer, which, if granted, would create an interest-bearing obligation of applicant merely for the benefit of creditors and stockholders of the railway company. Notwithstanding the fact that the railway company owns all of applicant's outstanding capital stock, the commission looks upon the two companies as being engaged in two separate and distinct lines of business, and it therefore follows that they must be so regarded when determining the adequacy of their reserves.

Re Edison Light and Power Co. (Application Docket No. 32142).

Lag of Earnings Held to Substantiate Going Concern Value

THE Pennsylvania Superior Court has disapproved the action of the commission in making no allowance for going concern value of a gas utility. Allowance is made for such an item, according to the court, not because it represents a past loss, but because it is a proper developmental cost which represents an investment, gives vitality to the plant, and from which the public receives a benefit.

The court pointed out that as in other cases it made no allowance for development cost unless it had resulted in a lag. The commission held that the company had not shown a lag justifying any allowance, but the court held that evidence was sufficient. Testimony by experts to facts showing careful study of the history of the particular plant and community was distinguished from testimony to indicate a wholly theoretical lag.

It was said that this is not the fixing of a theoretical value based on the mere hypothesis that a lag always exists and may be fixed by experts by formula. It was said to be a matter of common experience and of everyday practice for the managers of business to call in experts who are able to advise them as to whether a given course will be profitable. The experts in effect expressed the opinion that in the light of the history and circumstances of the community served and the particular enterprise developed there was necessarily a period prior to 1901 when the residents of the community served did not adopt the use of a commodity which had merit, and there were on that account periods of inadequate return. Concerning the evidence to support going concern value, it was declared:

> This evidence consisted of (a) a history of the development of the plant and community and changes in purposes for which gas was used by consumers; (b) data showing a lag in the use of a number of extensions and other improvements made by the company; (c) the opinions of experts; and (d) admissions by experts called by the complaining municipalities.

Chambersburg Gas Co. v. Public Service Commission, 176 Atl. 794.

Other Important Rulings

THE California commission has held that while it cannot change a clear and definite statutory provision to give effect to a supposed intention of the legislature, it may in construing an ambiguous, indefinite, and inconsistent